

# IN DIRE STRAITS?

THE STATE OF THE JUDICIARY REPORT 2016



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A CEPIL  
REPORT

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With Support from:

THE OPEN SOCIETY INITIATIVE  
FOR EASTERN AFRICA 

# IN DIRE STRAITS?

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## THE STATE OF THE JUDICIARY REPORT 2016



Centre for Public  
Interest Law



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## Abbreviations and Acronyms

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<b>ACHPR</b>	: African Charter on Human and Peoples' Rights
<b>ADR</b>	: Alternative Dispute Resolution
<b>AG</b>	: Attorney General
<b>BTI</b>	: Bertelsmann Stiftung's Transformation Index
<b>CEHURD</b>	: Centre for health, Human Rights and Development
<b>CEPIL</b>	: Centre for Public Interest Law
<b>CJ</b>	: Chief Justice
<b>CRPD</b>	: United Nations Convention on the Rights of Persons with Disabilities
<b>DCJ</b>	: Deputy Chief Justice
<b>EAC</b>	: East African Community
<b>IBA</b>	: International Bar Association
<b>ICCPR</b>	: International Covenant on Civil and Political Rights
<b>ICT</b>	: Information and Communications Technology
<b>IG</b>	: Inspectorate of Government
<b>IPPR</b>	: Institute of Public Policy Research
<b>JLOS</b>	: Justice, Law and Order Sector
<b>JSC</b>	: Judicial Service Commission/Justice of the Supreme Court
<b>LDC</b>	: Law Development Centre
<b>NCCS</b>	: National Center for State Courts
<b>OAG</b>	: Office of the Auditor General
<b>PQD</b>	: Political Question Doctrine
<b>ULS</b>	: Uganda Law Society
<b>URA</b>	: Uganda Revenue Authority
<b>URSB</b>	: Uganda Registration Services Bureau
<b>WJP</b>	: World Justice Project

# EXECUTIVE SUMMARY

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## INTRODUCTION

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The Centre for Public Interest Law (CEPIL) is a non-profit making, non-religious and non-partisan organisation which was registered under the Companies Act in September 2009. The organisation was set up with the aim of positively contributing to the promotion of good governance and democratic principles in Uganda.

CEPIL aims at upholding these principles by ensuring that every citizen in Uganda has equal access to social, economic, and political opportunities without discrimination on the basis of their social standing, religion, political opinion or membership of a political party or organisation, and ethnicity. Particularly, the organisation seeks to roll out its tenet using law as an effective tool in the promotion of good governance; using advocacy and lobbying for credible responsiveness by the policy/decision makers from the supply side; and employing action oriented policy research, sensitization and civic empowerment for effective demand side engagement by the citizenry.

CEPIL aims at achieving a vision of Justice, Equality and Dignity for all people in Uganda. In accordance with its vision, CEPIL recognizes the fact that the institution of the Judiciary is the custodian of Law and Justice in Uganda. It also acknowledges that an effective Judiciary is paramount to guaranteeing Law and administering Justice in Uganda. However, the status quo paints a picture of an ineffective Judiciary dogged by inhibitions which limit its efficiency in the administration of Justice. It is against this background that CEPIL commissioned a research into the state of the Judiciary with the aim of positively contributing towards advocating for a more effective judicial system in Uganda.

This inquiry also comes against the background of the general decline of the rule of law in Uganda and the fact that the ineffectiveness of the Judiciary, being both a root and a result, takes center stage of this decline. By producing this report, CEPIL hopes to contribute towards the charting of the path for a reformed, functional, well-resourced and independent judiciary that serves the purpose of its existence.

CEPIL commissioned this project with support from the Open Society Initiative for Eastern Africa (OSIEA) and the research was conducted by a team of four (4) persons namely; David Okello, Andrew Karamagi, Annet Namugosa and Joanitta Bogere.



## RESEARCH METHODOLOGY

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The research team held several meetings to discuss and agree on the mode of undertaking this assignment and the pool of respondents that would be interviewed. The team developed data collection instruments in the form of questionnaires taken from four heads to wit Constitutional mandate of the Judiciary; appointment process and disciplinary measures; and, accountability and prospects for reform. These questionnaires were intended to promote a uniform approach in the data collection exercise and to avoid inconsistencies.

The team relied predominantly on stake holder engagements and carried out a series of interviews not only with state and non-state actors involved in the administration of justice but also with the consumers of justice. The exercise targeted judicial officers, legal aid providers, non-government organizations, academia, the justice law and order sector, and the general public. Letters were sent out to all prospective respondents and personal visits were made to their offices for purposes of obtaining the requisite information. The prospective respondents who gave team members audience were given the option to either grant a physical interview or answer the questionnaire electronically in which case they would send their responses to the CEPIL Secretariat.

Inspections and interviews were conducted not only in Kampala and its outskirts but also in up country jurisdictions like Kyegegwa, Gulu, Mbarara, Mbale and Fort portal. Interviews were administered, photographs taken and discussions held.

The process of raw data collection took a period of six months from May to November 2015. All responses were recorded by hand and subsequently entered into an interview exercise report which formed the basis of the findings in the final report. The desk research aspect entailed perusal of various reports, articles, text books, case files, court documents that included court proceedings ad verbatim, affidavits and various notices and motions. Reliable print and electronic media was also used to gather vital information.

The data collected from the field was reviewed, assessed and compared to the findings obtained by way of desk research. The research was both qualitative and quantitative in nature. An initial report was written, reviewed and subjected to the opinion of an independent consultant. The resultant draft was peer reviewed by a team of Legal and Media experts at a consultative meeting held on the 25th May 2016 at Metropole Hotel, Kampala. The insights and comments gathered from this team were then relied on to conduct further reviews. The overarching objective was to form an all-round picture of the current state of Uganda's judiciary, in particular as it relates to integrity, competence, impartiality and the variance (if any) between law and practice.

## PROJECT BACKGROUND

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The promulgation of a new Constitution in 1995 was a watershed moment in more ways than one. It heralded a new dispensation for the economic, social and political planes of the Ugandan polity. The new Constitution was alive to the societal, religious and cultural questions of the day and strove to address them squarely with enactments ranging from cultural rights safeguards to the recognition of the religious and ethnic diversities that are Uganda's crown jewel. The loudest applause was reserved—and its echo can still be heard—for the civil and political (human) rights regime that the plebiscite ushered in. Specific provisions were enacted for the observation and protection of individual and group rights.

It could, without the fear of contradiction be opined that the stage had been set for a Parliament that would legislate for the common good; an Executive that would govern in an enlightened and prudent fashion as well as a competent arbiter of conflict in the form of a demonstrably efficient Judiciary. Placing none above the other, the framers of the Constitution had meticulously laboured to fortify each arm of government for the role it was to undertake.

Pertaining to the Judiciary, the framers of the Constitution were alive to the fact that a well-functioning judiciary is essential for the protection of fundamental rights and adherence to the rule of law; without which national security, public service delivery, domestic and international investments, public order, economic growth and development would be impossible. They also recognized that in order for the Judiciary to carry out its mandate, it should be independent and adequately empowered to effectively dispense justice.

Despite the clear phraseology and intention regarding the importance of the Judiciary, consensus across the board suggests that the Judiciary has not lived up to its constitutional mandate as it has nearly irreparably been emasculated. From the literal dereliction of its structures, executive interference and decline in the rule of law, to outright financial starvation, the Judiciary has, for the short lifetime of the Ugandan state so far, been left holding the shorter end of the stick in the contestation for political space and power.

It is necessary to observe that it has not all been doom and gloom; strides have been made in the right direction especially following the enactment of the 1995 Constitution. Staffing and the rate of case disposals, although not yet adequate, have improved, and corruption, in its various forms—especially in the courts of record—has significantly reduced. In addition, efforts have been made towards innovation and installing electronic and digital equipment to enable more efficient methods of work. These and more prospects notwithstanding, challenges abound.

This report has concerned itself with the state of the Judiciary in Uganda and examines questions pertaining to its institutional and organizational independence, judicial tenure and mandate, the operation and administration of the Judiciary and its interaction with other arms and departments of government. It is the stated objective of this report to provide sufficient illumination and analysis of the status of the Judiciary in Uganda and thereafter suggest ways forward that will, if implemented help the Judiciary to effectively execute its mandate.



## RESEARCH FINDINGS

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Owing to the constitutionally guaranteed Legal and Administrative framework and against the backdrop of regional and international best practices for the administration of justice, the study highlights both external factors and internal institutional weaknesses that affect the efficient administration of justice in Uganda. The key factors identified as affecting the judiciary in its attempt to effectively administer justice are the following:

- The general decline in constitutionalism and the rule of law in Uganda.
- A multitude of factors that contribute to flaws in the judicial appointment processes.
- Financial and infrastructural constraints stemming from the fact that the judiciary often gets less than 1% of the national budgetary allocation.
- Corruption which is often perceived across the board as a mirror of the general moral breakdown in our society.
- The incapacitation of Local Council Courts.

In the same vein, the study was able to point out internal institutional weaknesses of the judiciary as outlined below:

- Case backlog which is always an impediment to the right of a speedy trial and access to justice.
- Lack of judicial accountability to the citizens on whose behalf it exercises its powers as enshrined in the nation's constitution.
- Inequality and discrimination in the administration of justice which seems to suggest that justice is not always dispensed on a first-come first-serve basis.
- Under-performance in strict relation to judicial officers not being able to dispense justice effectively due to incompetence, a lack of commitment and structural inadequacies regarding case management.

The study also noted that despite the above challenges that seem to undermine effective administration of justice in Uganda, not all is doom and gloom. Government in partnership with civil society organizations has made notable strides towards a more effective system of administration of justice such as the introduction of the Administration of Justice Bill 2014 which aims at enhancing judicial independence, The Legal Aid Bill 2011 which is aimed at streamlining the provision of legal aid services in Uganda and the introduction of the performance enhancement tool which seeks to comprehensively monitor performance of judicial officials in Uganda. In addition, the establishment of Justice Centres and the creation of the Small Claims Procedure were identified as great prospects for reform.



## RECOMMENDATIONS

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In light of the findings of the study, the CEPIL research team suggests the following recommendations to ensure that the Judiciary is realigned to enable it effectively realize its constitutional mandate:

- 1) That Government increase the financial and operational support rendered to the Judiciary.
- 2) That the judicial appointments processes be made more transparent and the Judicial Service Commission should only forward the names of successful candidates.
- 3) That the Judicial Service Commission (JSC) thoroughly and effectively investigate complaints of judicial misconduct and involve the public in the disciplinary processes of judicial officers.
- 4) The Judicial appointment processes be rationalized in such a way that serving and career judicial officers who are competent be given priority in order of seniority and experience. This way, the system would not only reward its long serving staff but also encourage a more organic process of individuals serving right from the grass-roots and magisterial areas.
- 5) That the Judicial Service Commission be composed of at least 6 full time members to ensure that quorum is more easily met and the Commission performs its role more efficiently and expeditiously.
- 7) That Parliament should increase funding to the Judicial Service Commission to enable them perform their functions.
- 8) That the heads of the respective courts in particular Chief Justice, Deputy Chief Justice and Principal Judge be included as ex-officio members of the Judicial Service Commission.
- 9) That the Judiciary be accountable to the public and mechanisms that increase access to information by the public be encouraged.
- 10) The use of the judicial score card to monitor case disposal and the actual performance of judicial officers be encouraged.
- 11) That a performance tool be prepared, launched and operationalized to ensure the uniform and standard monitoring of performance across the Judiciary. All members of the Judiciary be formally sensitized and educated about the use, indicators and implications of said tool before its operationalization.



- 12) That the Administration of Justice Bill be enacted into law to give the Judiciary a measure of financial autonomy and independence
- 13) That the Legal Aid Bill be enacted into law to facilitate the right to access justice.
- 14) That the Judiciary strengthens the capacity and effectiveness of the Judicial Studies Institute (JSI) as well as facilitates the growth of electronic library information systems.
- 15) That the Judiciary embraces judicial activism and develops new principles in Ugandan jurisprudence that will align our legal system to the constitutional aspirations and globally established international legal standards.
- 16) That the Judiciary provides due processes and equal protection of the law to all who have business before them. It ought to develop a clear and precise yardstick to schedule cases with the earlier filed matters given priority over the later filed matters.
- 17) That the Constitution be amended to allow the Chief Justice be part of the disciplinary processes of the Judiciary.
- 18) That all persons, departments and organs of state are called upon to respect and implement the decisions of the Judiciary and that the Judiciary uses the legal resources available within its disposal to clamp down on defaulting persons and entities.
- 19) That courthouse facility' guidelines be prepared and adopted to ensure that responsible entities design, build, maintain and rent courts facilities that are suitable, safe, secure and accessible.

Although the Judiciary has strived to measure up to the expected standards, this study reveals that it has often fallen short on account of a myriad of challenges as identified in this report. However, some efforts to remedy these are in the pipeline and others are being proposed herein. It is CEPIL's hope that if adopted and implemented, the aforementioned recommendations will go a long way in contributing to efforts geared towards enhancing a more effective administration of justice in Uganda. CEPIL earnestly urges stakeholders and members of the Judiciary to adopt recommendations of this study and calls upon other arms of the government and all key stake holders in the administration of justice to support the Judiciary in the realization of the ideal judicial system in Uganda.

## 1.0 LEGAL AND ADMINISTRATIVE FRAMEWORK FOR THE JUDICIARY

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Uganda is bound by a set of International, regional and local laws which are tailored to guarantee the proper functioning of the Judiciary. They include the country's Constitution, various legislation, policy, regulations and principles which encapsulate best practices gathered across the globe. Indeed, Uganda's Constitution has been and continues to be a beacon for Constitutional-writing processes in other countries such as South Sudan. These rules govern the rights and responsibilities of the government, members of the Judiciary and citizens in the realization of the ideal judicial system. They also form a standard against which both the Judiciary's performance and progress can be measured and monitored. They include;

### 1.1 INTERNATIONAL AND REGIONAL STANDARDS

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The body of International law which governs the exercise of judicial power focuses its attention on all factors that guarantee the right to a fair hearing. To this end, international law prescribes the promotion and enforcement of the right to equality before the law, the right to be tried by a competent, impartial and independent tribunal, the rights and duties of members of the Judiciary and the safeguards (adequate funding, conditions of service etc.) which government must put in place to ensure the independence of the Judiciary. The following Instruments create the said rights and obligations;

#### 1.1.1 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

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Article 14(1) of the ICCPR states that 'all persons shall be equal before the courts and tribunals' and that '*in the determination of any criminal charge against him, or of his rights and obligations in a suit of law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law*'. The UN Human Rights Committee (which is the body of independent experts that monitors the implementation of the ICCPR) specifies that the independence of courts comprises the manner in which judges are appointed, the qualifications for appointment, and the duration of their terms of office; the condition governing promotion, transfer and cessation of their functions and the actual independence of the Judiciary from the executive branch and the legislative.<sup>1</sup> Uganda has ratified the Covenant.<sup>2</sup>

<sup>1</sup> Human Rights Committee, General Comment NO.13, 'Equality Before the Courts and the Rights to a Fair and Public Hearing by an independent Court established by Law (Art. 14), at para 3

<sup>2</sup> Office of the High Commissioner for Human Rights, Uganda's ratification status, available at [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CCPR&Lang=en) (accessed on 15/6/2016)



## 1.1.2 AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS (ACHPR)

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The ACHPR<sup>3</sup> provides that *'every individual shall have the right to be tried within a reasonable time by an impartial court or tribunal'*. Furthermore, that state parties shall have a duty to guarantee the independence of the courts.<sup>4</sup> Uganda has ratified this Charter.<sup>5</sup>

## 1.1.3 THE EAST AFRICAN COMMUNITY TREATY

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Article 7(2) of the EAC Treaty<sup>6</sup> provides for principles to be observed by the member States. Under this provision, the member States undertake *'to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights'*. Moreover, the EAC Treaty established the East African Court of Justice,<sup>7</sup> the role of which is to *'ensure the adherence to law in the interpretation and application of and compliance with' the EAC Treaty.*

## 1.1.4 UN BASIC PRINCIPLES ON THE INDEPENDENCE OF THE JUDICIARY

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The UN Basic Principles on the Independence of the Judiciary provide for the independence of the judiciary to be guaranteed by the State and enshrined in the Constitution or the law of the country. It also provides that the Judiciary like other citizens are entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

On the issue of qualifications, selection and training, it provides that persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. It also provides that any method of judicial selection shall safeguard against judicial appointments for improper motives. It further prescribes generally that *'in the selection of judges, there shall be no discrimination against a person on the grounds of race, color, sex, religion, political or other opinion, national or social origin, property, birth or status.'*

It further provides that the conditions of service and tenure of office of judges, their independence, security, adequate remuneration, pensions and the age of retirement shall be adequately secured by law. It also provides that the promotion of judges, wherever such a system exists, should be based on objective factors; in particular ability, integrity and experience.

<sup>3</sup> Article 7(1) ACHPR

<sup>4</sup> Article 26 ACHPR

<sup>5</sup> Office of the Commissioner, Uganda's ratification status, available at <http://www.achpr.org/instruments/achpr/ratification/> (accessed on 15/6/2016)

<sup>6</sup> Established by the East African Community Treaty of 30th November 1999, which entered into force on 7th July 2000

<sup>7</sup> Article 9 para 1 of the EAC Treaty

In regard to discipline, suspension and removal, the principles require that a charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The Principles also provide that the judge shall have the right to a fair hearing and that the examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge. It further requires that disciplinary, suspension or removal proceedings against judicial officers shall be determined in accordance with established standards of judicial conduct.

### 1.1.5 IBA MINIMUM STANDARDS OF JUDICIAL INDEPENDENCE

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The International Bar Association (IBA) Minimum Standards of Judicial Independence (adopted in 1982) address the relationship between judges and the executive, judges and the legislature; terms and nature of judicial appointments; the press, the judiciary and the courts, standards of conduct; securing impartiality and independence and the internal independence of the judiciary.<sup>8</sup> Particularly, Principle 1 (a) provides that 'individual judges should enjoy personal independence and substantive independence'. It goes ahead to define the former to mean 'that the terms and conditions of judicial service are adequately secured so as to ensure that individual judges are not subject to executive control' and the latter to mean 'that in the discharge of his/her judicial function a judge is subject to nothing but the law and the commands of his/her conscience'.

### 1.1.6 THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT

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The Bangalore Principles of Judicial Conduct were designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial; and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

The principles are succinctly stated as "values" to wit independence<sup>9</sup>; impartiality; integrity; propriety; equality; competence and diligence. Each "value" is supplemented by a statement of the "principle" and a series of points relevant to its application. They establish standards for ethical conduct of judges and assist members of the executive, the legislature, lawyers and the public in general, to better understand and support the judiciary. Accordingly, the Bangalore statement requires all national judiciaries to adopt "effective measures ... to provide mechanisms to implement these principles." Uganda adopted the Bangalore Principles and modeled the Uganda Code of Judicial Conduct after them.

<sup>8</sup> Principle 2 provides that 'the Judiciary as a whole should enjoy autonomy and collective independence vis-à-vis the Executive.

<sup>9</sup> Principle 1



### 1.1.7 THE HARARE COMMON WEALTH DECLARATION 1991

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Uganda is also a co-author of the Harare Commonwealth Declaration<sup>10</sup> under which it has pledged explicitly 'to work, with renewed vigour on *'democracy, democratic processes and institutions which reflect national circumstances, the rule of law, the independence of the Judiciary, and just and honest government'* It has likewise pledged its commitment to fundamental human rights, including equal rights and opportunities for all citizens regardless of race, color, creed or political belief.

### 1.1.8 THE COMMONWEALTH (LATIMER HOUSE) PRINCIPLES

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The Commonwealth (Latimer House) Principles on the Three Branches of Government<sup>11</sup> state that an independent, impartial, and competent Judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice. The Principles provide inter alia that to secure these aims, judicial appointments should be made on the basis of clearly defined criteria and a publicly declared process and arrangements for security of tenure and protection of levels of remuneration must be in place. They further provide that adequate resources should also be provided for the judicial system to operate effectively and that interaction, if any, between the Executive and the Judiciary should not compromise judicial independence.

## 1.2 CONSTITUTIONAL STANDARDS

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The exercise of judicial power in Uganda is governed by a Constitutional framework under which the Judiciary is an independent organ of government entrusted with the responsibility of administering justice.

Chapter Eight of the Constitution provides for the Judiciary. Cardinal among its functions is to adjudicate over both civil and criminal disputes, interpret the Constitution and the Laws of Uganda and promote or encourage the promotion of human rights, social justice and morality.

The law has established certain key principles upon which the performance of the Judiciary, the efficiency of its service delivery and ultimately the administration of justice in the sector can be measured. Key amongst these is that there should be respect for human rights and that the institutions that are involved in the law and administration of justice should at all times be mindful that they carry out functions that directly or indirectly affect the rights of citizens.

<sup>10</sup> Signed on 20th October 1991

<sup>11</sup> Agreed by Law Ministers and endorsed by the Commonwealth Heads of Government in Abuja, Nigeria, 2003

Even more importantly, the Constitution states that judicial power is derived from the people and is to be exercised in conformity with law and with the values, norms and aspirations of the people. It thus sets out principles that the courts are to follow when exercising their powers. These are<sup>12</sup>:

- a) Justice must be done to all irrespective of their social or economic status;
- b) Justice must not be delayed;
- c) Adequate compensation must be awarded to victims of wrongs;
- d) Reconciliation between parties should be promoted; and,
- e) Substantive justice must be administered without undue regard to technicalities.

## 1.3 PRINCIPLES RELATING TO THE ADMINISTRATION OF THE JUDICIARY

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The basic principles of Judicial Administration are practical operational principles which have been developed to assist the Judiciary to carry out its role more effectively. They are not only premised on the acceptance of the fact that the challenges inhibiting the Judiciary (such as long-term budget shortfalls) exist but also on the resolve that the Judiciary can perform its role if it is aided to exercise discretion in the management of its own affairs. To this end, they have been developed with the intention of empowering the leadership of the Judiciary to make the fiscal and structural decisions that are necessary 'to enable courts to enhance the quality of justice while facing increased caseload with fewer resources.'<sup>13</sup>

States in various jurisdictions have prepared such models to guide the administration of the Judiciary and these have generally addressed questions of governance, decision-making, case administration and funding. Particularly, they call for well-defined governance structures, a qualified, competent and well-trained workforce; the employment of alternative dispositional approaches, the use of performance measures and evaluation at all levels; budget requests based solely upon demonstrated need; the development of performance standards based on corresponding, relevant performance measures; authority to allocate resources with minimal legislative and executive branch controls and the administration of funds in accordance with sound and accepted financial management practices.<sup>14</sup>

## 1.4 STRUCTURE OF THE COURTS

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Uganda has a pyramidal court structure with the Supreme Court, the Court of Appeal, High Court and other subordinate Courts as Parliament may by law prescribe.

### SUPREME COURT

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This Court stands out at the top of Uganda's judicial pyramid as the final Court of Appeal in Uganda.<sup>15</sup> The only exception is that when it comes to presidential elections, the Supreme Court has both original and exclusive jurisdiction.<sup>16</sup>

<sup>12</sup> Article 126 of the 1995 constitution of Uganda

<sup>13</sup> National Center for State Courts, 'Principles For Judicial Administration,' July 2012, p. i

<sup>14</sup> *Ibid*, p. ii, iii, iv, v

<sup>15</sup> Established under Article 130 of the 1995 Constitution of Uganda

<sup>16</sup> Article 104 of the Constitution and Section 57 of the Presidential Elections Act, cap 142 of the laws of Uganda



The Supreme Court is constituted by the Chief Justice and not less than six justices. Five justices are sufficient to hear most cases but when hearing appeals from decisions of the Court of Appeal sitting as a Constitutional court, a full bench of seven Justices has to be present. At the moment, Uganda has nine Justices of the Supreme Court.<sup>17</sup> The decisions of this court form precedents that all lower courts are bound to follow.<sup>18</sup>

## COURT OF APPEAL/ CONSTITUTIONAL COURT

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The Court of Appeal is also a creature of the 1995 Constitution. It is an interposition between the Supreme Court and the High Court and has appellate jurisdiction over decisions of the High Court. It is not a court of first instance and it has no original jurisdiction except when hearing matters pertaining to the interpretation of the constitution. In that case, it sits as a constitutional court with a bench of five justices.<sup>19</sup> The Court of Appeal consists of the Deputy Chief Justice and such number of Justices of Appeal not being less than seven as parliament may by law prescribe.<sup>20</sup> Currently there are fourteen Justices sitting at the Court of Appeal.<sup>21</sup> Most cases decided by the Court of Appeal are appealable to the Supreme Court.

## HIGH COURT

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The High Court of Uganda is the third court of record in the order of hierarchy and has unlimited original jurisdiction. This means that it can try a case of any value or a crime of any magnitude.<sup>22</sup> Appeals from the Grade One and Chief Magistrate courts lie to the High Court. The High Court is headed by the Principal Judge who is responsible for the administration of the Court; the High Court has supervisory powers over all Magistrates Courts.<sup>23</sup>

The Court has been divided into several divisions and circuits to ease access to the courts by litigants. These include - the Civil Division, Land Division, the Commercial Division, the Family Division, the Criminal Division, the Execution Division, the Anti-Corruption Division and the War Crimes Division which became the International Crimes Division *vide* the High Court (International Crimes Division) Practice Directions 2011.<sup>24</sup>

With the decentralization of the High Court, its services are now obtained not only at its headquarters in Kampala but also at its circuits at Fort Portal, Gulu, Jinja, Masaka, Mbale, Mbarara. A re-design and creation of more High Court Circuits has recently been passed *vide* the Judicature (Designation of High Court Circuits) Instrument 2016. Nakawa Circuit has been disbanded and nine more circuits have been created making an aggregate number of twenty circuits.

17 judiciary.go.ug: The Honorable Justices of the Supreme Court [posted 5 March, 2015]

18 Article 132 (4) Constitution, *supra*, Attorney General vs. Joseph Tumushabe *supra*

19 Article 137(1) of the Constitution

20 Article 134 of the Constitution

21 judiciary.go.ug: The Honorable Justices of the Court of Appeal [posted 31 December, 2015]

22 Article 138 of the Constitution

23 S. 17 of Judicature Act Cap 13

24 ugandalawlibrary.com/TheRepublicofUgandaCourtofJudicature/JudgesoftheCourtofHighCourt



## MAGISTRATES COURTS

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Magistrates Courts handle the bulk of civil and criminal cases in Uganda.

There are three levels of Magistrates Courts in Uganda;

1. Chief Magistrates Courts
2. Magistrate Grade 1
3. Magistrate Grade 2

These are subordinate courts whose decisions are subject to review by the High Court. Presently this court is divided into thirty nine Magisterial Areas administered by Chief Magistrates who have the general powers of supervision over all Magistrates' Courts within their area of jurisdiction.<sup>25</sup>

## 2.0 MAJOR CHALLENGES

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When the delegates of the 1994 Constituent Assembly framed Uganda's 1995 Constitution, they painted for the Judiciary a picture of strength, ability and competence; an institution that was not only capable of delivering on its mandate but was also trusted by and accessible to members of the public. Today, the Judiciary is not only administratively and financially weak; it is regarded with suspicion, skepticism, unease or fear by substantial sections of the general public.

Despite the ever present justice needs of our society, only a paltry number of its members are able to entrust the Judiciary or the formal justice system with their desperate search for resolution. Even those few that have taken this route have generally not achieved just outcomes. A 2016 survey carried out by HiiL has shown that in the last four years, nearly nine out of 10 Ugandans required access of some kind to the justice system, but their needs are not being met.<sup>26</sup> The research further indicated that access to legal justice in Uganda is patchy and unfair, that the formal justice system is almost impenetrable for the most vulnerable people in Uganda and that solutions are urgently needed.<sup>27</sup> Figures 1 and 2 below illustrate the Justice needs in Uganda and the particular resolution mechanisms resorted to by the public respectively;

<sup>25</sup> S.221 of Magistrates Court Act Cap 16

<sup>26</sup> The Hague Institute for the Innovation of Law, 'Justice Needs in Uganda; Legal Problems in Daily Life,' 2016, P.39

<sup>27</sup> Ibid, p. 80



	Female	Male
Land	30%	<b>43%</b>
Crime	30%	<b>36%</b>
Neighbours	<b>28%</b>	22%
Family	<b>52%</b>	20%
Money	15%	<b>19%</b>
Employment	8%	<b>17%</b>
Public Services	7%	<b>12%</b>
Children	<b>15%</b>	11%
Housing	9%	9%
Business	3%	5%
Social Welfare	3%	5%
Accidents	2%	5%
Consumption	4%	3%
Obtaining ID	1%	1%

*Different people are affected by different problems; men are more often faced with problems related to land, crime, money, employment and public services. Women on the other hand experience problems with their neighbours, family and children more often.*

**Fig. 1:** HiiL Report, 'Justice Needs in Uganda: Legal Problems in Daily Life,' 2016, <http://www.hiil.org/publications/data-reports> (last accessed on 11/7/2016)

Of the 6,202 people that the HiiL report surveyed, over 88% experienced one or more serious justice problems in the past four years. Figure one above reveals that the most prevalent justice problems in Uganda were found to be related to land, family matters and crime; with specifically high occurrences of disputes among neighbors over boundaries, rights of way or access to property, theft/robbery and domestic violence. There is no doubt that the law as set out in chapter one above has made provision for avenues in the formal justice system, within which these justice problems can be resolved.<sup>28</sup>

'When facing a justice problem, the first thing people do is to look for information and/or legal advice. They ask family, friends and other trusted people about their rights and what they can do to address the situation.<sup>29</sup> However, research has revealed that only 5% of Ugandans resort to a court of law to either obtain information regarding the resolution of their disputes or to resolve their disputes.<sup>30</sup> Indeed, the courts were found to be the least trusted of justice institutions with most people believing them to be rigid, partial and inaccessible.

<sup>28</sup> *Supra*, p. 24. For Instance, there is within the High Court, the following divisions; Land, Criminal, Family and Anti-Corruption. The Industrial court was also recently create to preside over employment disputes. In any case, the High court has unlimited original jurisdiction in all matters; civil or criminal.

<sup>29</sup> The Hague Institute for the Innovation of Law, *supra*, p.61

<sup>30</sup> According to the HiiL report, justice problems that are most likely to end up in a court of law are problems related to land, public services and crime.



Fig 2: Hiil Report, 'Justice Needs in Uganda: Legal Problems in Daily Life,' 2016, <http://www.hiil.org/publications/data-reports> (last accessed on 11/7/2016)

The proper administration of justice requires not only that justice be done but also that justice be seen to be done. For this to be achieved, the Judiciary must enjoy the confidence of the public which should generally believe that the Judiciary has both the power and the right to resolve disputes. Figure 2 above reveals that the courts of law rank lowest among the institutions that the public generally believes to be capable of just dispute resolution. The research showed that the public believed NGOs, lawyers and government more trustworthy in the administration of justice than the institution constitutionally mandated to deliver it.

Figure 3 below<sup>31</sup> corroborates these findings by attesting to the fact that only about 8% of the members of the public resorts to the courts of law as a formidable and fair mechanism through which their disputes can be resolved. The figure also correlates the finding that the public generally resorts to persons or institutions it trusts such as clan and family members, elders and neighbors. It is particularly interesting to note that the public was revealed to resort and therefore to trust Local Council Courts and the Police more than it does the main stream courts.

The data collated and analyzed above depicts the Judiciary as a mistrusted and inaccessible institution; a picture far removed from that drawn by the framers of our Constitution.

31 *Infra*, p.



Despite Uganda's very promising legal framework, the Judiciary has, in the performance of its mandate, been hampered majorly by the following factors:

## 2.1 DECLINE OF RULE OF LAW

The rule of law doctrine focuses on the Judiciary more than any other institution.<sup>32</sup> This is because an independent judicial system is the guardian of the rule of law, the guarantor of equality before the law and the protector of human rights and freedoms. The Judiciary interprets laws and enforces their application. It also monitors the exercise of power and ensures that such use is in accordance with the law.<sup>33</sup>

According to the World Justice Rule of Law Index, Uganda was rated ninety-fifth out of one hundred and two countries assessed on their adherence to the rule of law.<sup>34</sup> The World Justice Rule of law Index is corroborated by the Fragile States Index under which Uganda was reported among the 'most fragile states' in the world.<sup>35</sup> The higher its score, the more fragile the state was assessed to be and therefore the more it was considered vulnerable to conflict or collapse. Scoring 97 across the indicators and landing the position of 23rd most fragile (out of 178 countries selected for the assessment), Uganda's performance in indicators such as 'Human Rights and Rule of Law,' was found lacking. The index identified politicization of the Judiciary, the violation or uneven protection of basic rights and corruption as a major curtailer of the social contract, undermining public confidence in government institutions.

Similarly, the Rule of Law Index is corroborated by the Bertelsmann Stiftung's Transformation Index (BTI) in which, out of the 129 countries assessed, Uganda obtained a 'limited' value of 6.9 and ranked 39<sup>th</sup>. Under this head, countries were assessed, *inter alia*, on their adherence to the Rule of Law at which Uganda scored 6.3 out of 10. Particularly, the Report noted that although '*the institutional differentiation of the organs of the state, their division of labor that guides their functioning and the provision of checks and balances are constitutionally provided for, they are quite often overstepped, usually by the Executive, more specifically the President.*'<sup>36</sup>

It is also noteworthy that although the report acknowledged the efforts taken by the higher courts to use their legal powers to rein in on executive excesses, it noted that the administration of Justice in Uganda was being hampered by inadequate funding and staffing, that the lower courts are widely believed to be susceptible to bribery and that the independence of the Judiciary is routinely challenged.

<sup>32</sup> 'Rule of Law' is the legal principle that law should govern a nation, as opposed to being governed by arbitrary decisions of individual government officials. Among the incidents of this principle is the rule that all persons including government and its officials must be accountable under the law and that Justice should be delivered in a timely manner by competent, ethical, and neutral persons. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.

<sup>33</sup> [www.halli.org/data/sitemanagement/media/Qua](http://www.halli.org/data/sitemanagement/media/Qua)

<sup>34</sup> <http://data.worldjusticeproject.org/> last accessed on 26/1/16

<sup>35</sup> <http://fsi.fundforpeace.org/rankings-2015/>; last accessed on 26/1/16

<sup>36</sup> <http://www.bti-project.org/reports/country-reports/esa/uga/index.nc#chap3>; last accessed on 26/1/16

This rating comes against the back drop of several incidents that demonstrate the increasing attack on the independence of the Judiciary by an overbearing Executive. From the Black Mamba siege (where suspects were rearrested by a large contingent of plain clothed armed men after being freed on bail by the High Court) to its sometimes outright defiance and disregard of court orders, the indiscretions of the executive arm have continuously threatened the due administration of justice. The siege on Makindye Chief Magistrate's Court under the watchful eye of the police on the 10<sup>th</sup> of August 2016 by demonstrators carrying placards in an attempt to prevent or frustrate the criminal trial of the Inspector General of Police, General Kale Kayihura and other Police officers under the Anti Torture Act, is an indicator of the decline in rule of law.

It is to be remembered that one of the cardinal requirements of the rule of law is that government should comply with the judgments/orders of court which are passed against it. Unfortunately, the impunity with which this particular requirement has been disregarded by the executive lends credence to the finding that Uganda is indeed a fragile state.<sup>37</sup> The disrespect of court orders has also been accompanied by repeated criticisms of judicial officers by the Executive. On several occasions, the President has been heard threatening judicial officers in the course of doing their lawfully entrusted duties. For instance, at the beginning of October 2005, the President in a move to counter the wide spread eviction of customary inhabitants of land parcels directed an immediate end to all evictions of lawful and bona fide land tenants across the country. He directed warnings at judicial officers who issued what he called 'bogus eviction warrants.' A State House statement quoted the president as having said that he will suspend a judge who colludes in illegal evictions and institute an inquiry.<sup>38</sup>

More recently, the president was quoted to have criticized judicial officers for failing to convict government officers who he believed were stealing drugs from government hospitals and health units and stated that he would 'talk to the Chief Justice about it.'<sup>39</sup> All these attempts by the Executive to interfere with the Judiciary in the exercise of its constitutional powers are a clear and unequivocal contravention of the rule of law and a threat to the due administration of justice.

This interference has in recent times manifested itself under the subtle auspices of the Political Question Doctrine (PQD) which propounds the principle that "*certain issues should not be decided by courts because their resolution is committed to another branch of government and/or because those issues are not capable, for one reason or another, of judicial resolution.*" It is with growing concern that many witness the increased enforcement of this doctrine in

<sup>37</sup> Such instances include: *The Daily Monitor Police Siege in 2013* (even with the order given by Court for Police to vacate the premises of daily Monitor, the Police continued to block the Daily Monitor employees from accessing their premises); *Charles Muganzi V Nantaba Aidah Erios, Miscellaneous Cause No. 21 of 2013* (The Respondent, the junior minister of lands continued to hold meetings between the applicant and persons laying claim to the suit land despite court proceedings) In 2013, the Minister for the Presidency Frank Tumwebaze defied the High Court Order (*Lukwago v. Attorney General and Another Civil Application No.6/2013*) prohibiting them from going ahead with the November 25,2013 KCCA Consultative meeting that saw Kampala Lord Mayor Erias Lukwago controversially impeached etc.

<sup>38</sup> International Bar Association, *supra*, p.23

<sup>39</sup> Even more recently, the Honorable Minister for ethics and Integrity, Fr. Lokodo was quoted to have castigated the Judiciary as corrupt and called for its overhaul. He further claimed that the courts have "disappointed (him) on three occasions". *New Vision*, March 30, 2016, Page 30.



Uganda's Jurisprudence not only because it is an avoidance mechanism<sup>40</sup> but also because owing to the decline of the rule of law in Uganda, it is a legal altar upon which judicial officers abdicate their responsibility, shying away from making pronouncements that would negatively affect the Executive.

For instance, in the case of **Hon. Miria Matembe v. Attorney General**,<sup>41</sup> a Constitutional Court challenge was made to the conduct of the Legislature. By a majority of four to one, the Court sought refuge in the Political Question Doctrine and decided that *"the Constitution does not require this court to supervise the functioning of the legislature in every aspect and at all the stages of its work. The greatest care must be taken to ensure that as far as possible the principle of separation of powers is duly observed by the three arms of government to avoid unnecessary erosion of each other's constitutional functions otherwise good and balanced governance may be unduly hampered."*

In 2015, in the matter of **The Institute of Public Policy Research (IPPR) (Uganda) v The Attorney General**,<sup>42</sup> IPPR applied for an injunction to stop the government from proceeding with a decision to recruit, deploy and or export over two hundred and fifty highly qualified, specialized and experienced healthcare professionals employed in the Ugandan public health sector plan, arguing that the plan was "illegal and unlawful, irrational and unreasonable, and *ultra vires* the jurisdiction, powers, authority and mandate of the government, as well as being contrary to the Constitution and international human rights conventions." Justice Elizabeth Musoke held thus: "I am yet to be convinced that the issues involved in the main cause do not rotate around the Political Question Doctrine. This doctrine is to the effect that certain disputes are best suited for resolution by other government actors."

It should however be noted that the recent Supreme Court decision in **Centre for Health, Human Rights and Development (CEHURD) V AG**<sup>43</sup> has made inroads into the effectiveness of this doctrine. In that case, the Supreme Court was called upon to pronounce itself over a maternal health mortality case which the Constitutional Court had dismissed preliminarily on grounds, *inter alia*, of the political question doctrine. In overturning that decision, the Supreme Court held not only that the political question doctrine has limited application in Uganda's current Constitutional order but that it only extends to shield both the Executive arm of Government as well as Parliament from judicial scrutiny where either institution is properly exercising its mandate, duly vested in it by the Constitution.

It further found that even in such circumstances, the doctrine could not bar the Constitutional Court from hearing a petition properly brought before it against the acts of Parliament or the Executive. Although the decision makes great strides in weakening the procedural hold of the doctrine, it is noteworthy that it leaves the doctrine room for employment in substantive law. The court opined that whereas the Constitutional Court could not dismiss a suit preliminarily on the basis of the doctrine, it could hear it and make a decision whether to allow or dismiss it on the same basis.

<sup>40</sup> The Judiciary is slowly developing cold feet on matters that are significant to the Executive. Professor Joe Oloka Onyango has collectively described these cases that involve avoidance of matters pertaining to the actions of the Executive, legislators and/or Parliament under the political Question Practice.

<sup>41</sup> Constitutional Petition No.02 of 2005

<sup>42</sup> *The Institute of Public Policy Research (IPPR) v. The Attorney General*, (Miscellaneous Application No.592 of 2014 (arising from Miscellaneous Cause No.174 of 2014)

<sup>43</sup> Constitutional Appeal No 01 of 2013

## 2.2 CHALLENGES IN THE JUDICIAL APPOINTMENT PROCESS

Under the Constitution, the Judicial Service Commission is mandated to appoint persons to the Magistracy and to exercise an advisory role as far as the President's power to appoint persons to the offices of Chief Justice, Deputy Chief Justice, Principal Judge, Justice of Supreme Court, Justice of Appeal, Judge of High Court, Chief Registrar and Registrar is concerned<sup>44</sup>.

The Judicial Service Commission is therefore supposed to source for personnel that boast both the necessary qualifications and the character to join the Bench. The Constitutional qualifications for qualifying to be appointed to the Bench are set out in Article 143 of the Constitution.<sup>45</sup>

- In case of the Chief Justice, the person must have served as a Justice of the Supreme Court of Uganda or a Court having similar jurisdiction, or have practiced as an Advocate for a period of not less than twenty years before a Court having unlimited jurisdiction in civil and criminal matters.
- The Deputy Chief Justice or Principal Judge must have served as a Justice of the Supreme Court, or Court of Appeal or Judge of the High Court, or a Court of similar jurisdiction or has practiced as an Advocate for a period of not less than fifteen years before a Court having unlimited jurisdiction in Civil and Criminal matters.
- To qualify for the office of Justice of Supreme Court one must have served as a Justice of the Court of Appeal or a Judge of the High Court or a Court of similar jurisdiction, or must have practiced as an Advocate for a period of not less than fifteen years before a Court having unlimited jurisdiction in Civil and Criminal matters.
- The office of Justice of the Court of Appeal requires one to have served as a judge of the High Court or a Court having similar jurisdiction, or has practiced as an Advocate for a period of not less than ten years or is a distinguished jurist.
- A Judge of the High Court must have been a Judge of a Court having unlimited jurisdiction in civil and criminal matters or a Court having jurisdiction in appeals from any such Court, or has practiced as an Advocate for a period of not less than ten years before a Court having unlimited jurisdiction in civil and criminal matters.

While the Constitution sets out qualifications for Justices of the Supreme Court, Court of Appeal and Judges of the High Court, no such qualifications are set out for the Magistracy. What now obtains however<sup>46</sup> is that for one to qualify to be appointed a Chief Magistrate or a Magistrate Grade 1, the minimum requirement is to possess a Bachelor of Laws Degree and Diploma in Legal Practice from the Law Development Centre (LDC). For Magistrate Grade II, the minimum requirement is a diploma in Law from LDC.

<sup>44</sup> Art 147, Constitution, *supra*

<sup>45</sup> Art 143 of the Constitution of the Republic of Uganda, *supra*

<sup>46</sup> Remmy Kasule, 'The Judicial Service Commission: Issues of Appointment, Discipline and Ethics' 2000



In the exercise of its mandate, the Judicial Service Commission is obliged to exercise the utmost principles of transparency and accountability. Indeed the constitution buttresses this point when it provides that *'all persons placed in positions of leadership and responsibility shall, in their work, be answerable to the people.'*<sup>47</sup>

However from our survey, we have noted that the appointment process of judicial officers is bedeviled by the following challenges;

## 2.2.1 LACK OF TRANSPARENCY IN JUDICIAL APPOINTMENTS

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Despite the constitutional safeguards in place, the Judicial Service Commission often operates against the principles of transparency and accountability in the exercise of its appointment mandate. In recent times, its rejection of various requests for information regarding the appointment of the current Deputy Chief Justice has demonstrated its short comings in this regard.<sup>48</sup> There are fears that the appointment of the Deputy Chief Justice was irregular and requests for information as to whether the current occupant of the office was ever recommended for the job by the Judicial Service Commission as required by law have been rejected by the Commission despite several requests.<sup>49</sup>

## 2.2.2 EXECUTIVE INTERFERENCE IN THE APPOINTMENTS PROCESS

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According to Article 142 of the Constitution, the Chief Justice, the Deputy Chief Justice, the Principal Judge, a Justice of the Supreme Court, a Justice of Appeal and a Judge of the High Court shall be appointed by the President acting on the advice of the Judicial Service Commission with the approval of Parliament. However, there have been instances where the Executive has sought to undermine the Judicial Service Commission's powers.

This interference is most aptly described by the case of **Hon. Gerald Kafureeka Karuhanga vs. AG.**<sup>50</sup> This was a constitutional petition brought under Article 137 of the Constitution challenging the appointment of Justice Benjamin Odoki for a two year term as the Chief Justice of the Republic of Uganda.

The said judge had vacated office upon attaining the mandatory retirement age.<sup>51</sup> The Judicial Service Commission had written to the President proposing that Justice Bart Katureebe be appointed the Chief Justice of Uganda but later, the Attorney General also wrote to the

47 Objective XXVI (II) of the National Objectives and Directive Principles of State Policy, The Constitution (supra).

48 Peter Esomu, a student of law at Nkumba University, petitioned the Chief Magistrates' Court in Mengo, Kampala in a bid to compel the Judicial Service Commission to release documentation detailing the search and selection precedent to the appointment of Deputy Chief Justice Steven Kavuma

49 Ibid

50 Constitutional Petition no.0039 of 2013



President informing him, albeit erroneously, that Benjamin Odoki could be re-appointed Chief Justice under Article 142(2)<sup>52</sup> as well as under 253(1)<sup>53</sup> of the Constitution.

The Constitutional Court held;

- a) One cannot read Article 143 independent of Article 144 which sets out the tenure of office of the Chief Justice and obliges him to vacate office at the age of 70 and that Article 142(2)<sup>54</sup> therefore did not apply to the circumstances.
- b) Article 142(1) of the constitution provides a tripartite procedure in which the Judicial Service Commission is required to expose a list of nominees and submit it to the president. The President then makes appointments from this list and sends the names to the Parliament for approval. The president can only appoint a judicial officer from the list that the Judicial Service Commission provides.
- c) The President cannot initiate the process of appointing any particular individual to judicial office as to allow such a process would be to undermine the independence of the commission and in a way subject it to the direction or control of the Executive arm of government, contrary to Article 147<sup>55</sup> of the Constitution.

Even with the knowledge of the above judgment by the constitutional court and the possession of the Judicial Service Commission's nominees, the President still took over two years to duly appoint a Chief Justice; an omission that was detrimental to the Judiciary and the rule of law.<sup>56</sup>

### 2.2.3 TARDINESS/ LETHARGY IN THE APPOINTMENT OF JUDICIAL OFFICERS

It should be noted from the onset that the incapacitation of the Judiciary due to government laxity, neglect or refusal to appoint judicial officers is one of the leading challenges in the field of the administration of justice in Uganda. Reports have shown that increased capacity in terms of judicial officers does improve disposal rates, reduce case backlog and improve the administration of justice.<sup>57</sup>

*51 It is mandatory that High court judges retire at 65 while justices of the supreme court and the Court of Appeal must retire at 70; Art 144(1) (b), (a) of the Constitution, supra*

*52 President may in case of a vacancy among others, appoint a qualifying person judge or justice notwithstanding that such person has cloaked the retirement age for that office.*

*53 A person who has vacated an office established by the Constitution may, if qualified, again be appointed or elected to hold that office in accordance with the Constitution.*

*54 Supra, p8*

*55 ibid*

*56 Since the retirement of the former Chief Justice in March 2013, it was not until March of 2015 that a new Chief Justice was appointed.*

*57 Last year's 10.5% increase in disposal rate was attributed, inter alia, to the increased appointment of more judicial officers, ibid, JLOS report, supra, p. 36*



However, appointments to judicial office have for long been few and in between. For instance from its 2015 audit review of the Judiciary structure, the Office of the Auditor General revealed '*staffing gaps in the staff establishment as 379 posts remained vacant during the year.*'<sup>58</sup> These included 4 Justices of the Supreme Court, 4 Justices of the Court of Appeal and 32 Judges of High Court.

Although the government has made recent appointments,<sup>59</sup> there remains a shortage of key staff who are critical drivers for the administration of justice. In fact, at the opening ceremony of the 2015 Annual Judges Conference, the Chief Justice Bart Katureebe implored the Executive branch to increase the number of High Court judges to eighty two.<sup>60</sup>

Related to the above is that a new and unconstitutional practice has emerged where the Judicial Service Commission has succumbed to pressure by the Executive to submit more names than the required number of positions to give the Executive discretion to pick judges. This practice of submitting more names to the President to enable him make a choice of who to appoint as a Judge does not reflect the spirit of the Constitution as far as judicial appointments are concerned. The JSC should nominate the exact number of Judges required by the Judiciary and the nominations should be made in the order of the candidates' performance in the Commission's inquiries. The President should not be at liberty to choose the nominees at the bottom of the list over those at the top. This will avoid situations where Judges believe that they are beholden to the President / system for their appointments.

## 2.2.4 AN INADEQUATE JUDICIAL DISCIPLINARY PROCESS

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The Judicial Service Commission is the body that is constitutionally mandated to receive, investigate and hear complaints brought against judicial officers.<sup>61</sup> In this way, its findings and recommendations facilitate the promotions and appointments process. However, it has steadily become apparent that the Commission, as constituted, does not have the capacity to effectively carry out this mandate. During the Judiciary's latest audit by the Office of the Auditor General (OAG), it was revealed that '*the Commission has been slow in handling cases brought against judicial officers.*'<sup>62</sup>

In fact, the Report revealed that at the close of the year 2013/2014, the commission's case backlog stood at 749 cases and that having registered 137 cases during the year 2014/2015, the total number of cases which the Commission had to determine in the year 2014/ 2015 were 886. This high risk of case backlog is one that the OAG has characterized as having '*a high likelihood of reoccurrence*' and indeed the Commission only cleared 106 out of 886 cases last year. This means that it carried 780 cases forward into the year 2015/2016.<sup>63</sup>

58 Office of the Auditor General 'Report Of The Auditor General On The Financial Statements of The Judiciary Department For The Financial Year Ended 30th June 2015,' presented to Parliament on 5th December 2015 by John F.S. Muwanga (Auditor General), p.6

59 For instance, the Judicial Service Commission recently appointed 56 new Grade one Magistrates and one Chief Magistrate .The president also recently appointed seven new Judges to the High Court. These are to replace seven others who the he appointed to the Court of Appeal. Daily Monitor, 2/March/2016

60 Chief Justice pushes for increase of High Court judges, The Independent news magazine, 19 Jan., 2016

61 S.9 of the Judicial Service Act Cap 14

62 This has bred a practice of discrimination in the administration of Justice which is contrary to Art 21 of the Constitution. See p.48 infra

63 Office of the Auditor General 'Report Of The Auditor General On The Financial Statements of The Judicial Service Commission For The Financial Year Ended 30th June 2015,' presented to Parliament on 14th December 2015 by John F.S. Muwanga (Auditor General), p.5

**Fig 3: provides a summary of pending cases in the Judicial Service Commission.** <sup>64</sup>

Cases b/f from 13/14	Cases registered in 14/15	Cases to dispose of 14/15	Cases Concluded 14/15	Cases c/f to 15/16
749	137	886	106	780

The JLOS report 2014/2015 has revealed that the JSC takes an average lead time of six months to conclude and determine a complaint against a judicial officer.<sup>65</sup> This would explain the low disposal rate of the commission. Although the Commission has improved from 18 months in 2012/13 and 12 months in 2013/2014, a lot more needs to be done.

This worrisome under-performance has ignited debate in various circles about the roots of this challenge. This report acknowledges that the Commission's short comings pose a significant challenge to the due administration of Justice since they may not only facilitate the appointment or promotion of ineligible persons to judicial office but also affect public confidence and trust in the Judiciary. The institution mandated with the delivery of justice must not be seen to excuse its errant folk from the just consequences of their actions or worse, to reward (through promotion or appointment) such deviant behavior. From this can arise mob justice, disrespect for court orders and ultimately a great decline in the rule of law.

The under-performance of the Commission has been attributed to many challenges. Firstly, the part time nature of the employment of members of the Judicial Service Commission which makes it *'difficult to realize the quorum and therefore expeditious handling and disposal of Cases against Judicial Officers.'*<sup>66</sup> Indeed whereas the Commission is composed of about 10 persons<sup>67</sup> and whereas the quorum of the Commission is six members,<sup>68</sup> only the office of chairperson is required to be full time. Secondly, like the Judiciary, the Judicial Service Commission, has *'no formulated policy on prioritizing the cases to be handled'* by it and for this reason *'some cases may remain unattended to for years.'*<sup>69</sup>

Thirdly, the report reveals that the activities of the disciplinary committee are hampered by lack of financial autonomy over its finances and by inadequate funding which has affected *'the Commission's ability to investigate, hear and conclude cases in time.'*<sup>70</sup> In 2014/ 2015, the Commission was financed by grants from Central Government totaling to UGX.3, 214,195,813 (only 96% of its approved budget estimates) and miscellaneous revenue totaling to UGX 21, 693,820.<sup>71</sup>

<sup>64</sup> *ibid*

<sup>65</sup> JLOS Annual Performance Report 2013/2014, p.2

<sup>66</sup> *ibid*, p.5

<sup>67</sup> These include two advocates, a Supreme Court judge, two members of the public, the Attorney General, a nominee of the Public Service Commission and a secretary.

<sup>68</sup> S.9 of the Judicial Service Act Cap 14

<sup>69</sup> This has bred a practice of discrimination in the administration of Justice which is contrary to Art 21 of the Constitution. See p.48 *infra*

<sup>70</sup> Speech of the then acting Chief Justice S.B Kavuma at the celebrations marking the opening of the new law year 2015 - 2016

<sup>71</sup> *ibid*, p. 1



However, as the report revealed, these finances were inadequate. For instance, whereas the Commission had planned to procure and install suggestion boxes in new areas, this was not done at all because the budget was not allocated to this item. Moreover, the Commission's funds, like those of the Judiciary have been controlled by the Executive arm through the Ministry of Justice and Constitutional affairs as well as the Justice Law and Order Sector. However, while awaited legal reforms may solve this challenge for the Judiciary, no corresponding efforts have been made in respect of the Commission.<sup>72</sup>

Furthermore, the judicial disciplinary process in Uganda is incapable of effectively enabling the appointment process because it excludes the heads of the courts from the Commission's deliberations. The principle of seniority upon which Uganda's judicial appointment process is based often renders serving judicial officers candidates for higher office. However, they are still subjected to the same investigations that the Judicial Service Commission is mandated to conduct over the eligibility of new entrants. During the interviews this team conducted, many respondents opined that the inadequacies in performance at the various levels of the courts was due to the fact that the judicial disciplinary processes are not in position to effectively identify errant or even incompetent judicial officers and that this ensured that these persons' bids for appointment to higher office were often unchallenged.

These respondents further explained that the presence of the heads of each court on the disciplinary committee of the Judicial Service Commission was necessary to ensure discipline, monitoring and in house cleaning of the Judiciary and that their absence cheated the Commission of first hand credible information in both disciplinary and appointment processes especially when dealing with promotions. It is important to note that this is not a new phenomenon and that the Chief Justice was indeed a member of the disciplinary committee during the tenure of former Chief Justice Wako Wambuzi. Although the framers of the 1995 Constitution did away with this inclusion,<sup>73</sup> their objections were not based on an objective assessment of the viability of including a holder of that office on the committee but rather on personal problems they had with the then Chief Justice.<sup>74</sup>

Indeed, the exclusion of the Chief Justice from the process of judicial corrections has made it quite difficult for the Judicial Service Commission to speed up disciplinary cases against judicial officers. It has also denied the Commission the opportunity of systemically receiving feedback from judicial officers having supervisory powers over those facing disciplinary proceedings. This position should be contrasted with the Kenyan scenario where the involvement of the Chief Justice in the disciplinary process has expedited hearings against errant judicial officers; the latest being the trial of Phillip Tunoi JSC who is accused of having received a bribe from Nairobi County Governor Evans Kidero to positively influence the election petition against him.

*72 It is noteworthy that these reforms were fueled by the Judiciary's need for financial and operational independence which in turn were based, inter alia on Art 128 of the Constitution. It is also noteworthy that the article is in pari materia with Art 147 which stipulates that 'in the performance of its functions, the Judicial Service Commission shall be independent and shall not be subject to the direction or control of any person or authority.'*

*73 Art 146 (4) of the 1995 Constitution provides that 'The Chief Justice, the Deputy Chief Justice and Principal Judge shall not be appointed to be chairperson, deputy chairperson or a member of the Judicial Service Commission'.*

*74 This was communicated in the course of the research interviews that the team conducted.*

## 2.3 FINANCIAL AND INFRASTRUCTURAL CONSTRAINTS

The Judiciary has neither the power of the Executive nor the purse of the Legislature. That leaves it at the mercies of both arms and independent stake holders such as donors for its smooth running. The trend is that the Executive gets the most funding off the national budget followed by the Legislature and the Judiciary through tools like supplementary expenditure requests. *“While the Executive and Parliament got 95 and 4.4 share of the National Budget in the financial year 2013-2014 respectively, the Judiciary got a miserable 0.6 share to cater for all its financial needs in terms of salaries and wages, capital development and current expenditure. In the financial year 2014-2015, the Judiciary was financed by grants from Central Government totaling to UGX 87,160,158,046 and UGX 3,600,570,068 in non-tax revenue bringing total revenue to UGX 90,760,728,114.<sup>75</sup> The funds could not meet half of the needs of the Judiciary.”<sup>76</sup>* Indeed, many of the Judiciary’s challenges, including low salaries, insufficient training, poor library and information services and derelict infrastructure can be laid at the door of financial constraints.

In terms of infrastructure, housing remains a glaring problem in the Judiciary. During his meeting with the committee on Legal and Parliamentary Affairs, the appointed Chief Justice Bart Katureebe cited housing among the underfunded projects which ought to be prioritized in the financial year 2015/16. Reports indicate that only 53% of Court houses throughout the country are housed in buildings owned by the Judiciary while the rest of the courtrooms are either rented premises or buildings of local administration in the respective districts.<sup>77</sup>

It is reported that every year government appropriates money for the rent of premises and that in the preceding financial year, 2014-2015, the Judiciary was allocated 7.247 billion shillings for rent.<sup>78</sup>

In fact, it has also been reported that the Judiciary’s accrued (incurred but yet to be paid) rent at the end of the year 2014/2015 accounted for about 67.6% of the total UGX.11, 038,979,655 which the Judiciary owed to its outstanding sundry creditors.<sup>79</sup> This is the rental debt which the Judiciary carried forward to the financial year 2015/2016. Moreover, at the beginning of that year, the institution had brought forward a rental debt of UGX 7, 406,028,975 from the previous financial year not to mention the UGX 7,912,581,736 rent accrued during the financial year 2014/ 2015. This brought the Judiciary’s total rental obligations to UGX 15,318,610,711. However, since government only paid UGX 7,847,023,694, the Judiciary carried forward UGX 7,471,587,017 which was 67.6% of its total debts. This data reveals that the Judiciary is labouring under a high risk rental burden which *‘has a high likelihood of reoccurrence, and in the opinion of the Auditor General requires urgent remedial action.’*<sup>80</sup>

<sup>75</sup> Office of the Auditor General ‘Report Of The Auditor General On The Financial Statements of The Judiciary Department For The Financial Year Ended 30th June 2015,’ presented to Parliament on 5th December 2015 by John F.S. Muwanga (Auditor General), p. 1

<sup>76</sup> Speech of the then acting Chief Justice S.B Kavuma at the celebrations marking the opening of the new law year 2015 - 2016

<sup>77</sup> Parliament Watch Uganda, ‘Courtroom space frustrating the administration of the Judiciary,’ <http://parliamentwatch.ug>.

<sup>78</sup> Speech of the then acting Chief Justice S.B Kavuma at the celebrations marking the opening of the new law year 2015 - 2016

<sup>79</sup> Office of the Auditor General ‘Report Of The Auditor General On The Financial Statements of The Judiciary Department For The Financial Year Ended 30th June 2015,’ presented to Parliament on 5th December 2015 by John F.S. Muwanga (Auditor General), p.10

<sup>80</sup> Office of the Auditor General ‘Report Of The Auditor General On The Financial Statements of The Judiciary Department For The Financial Year Ended 30th June 2015,’ presented to Parliament on 5th December 2015 by John F.S. Muwanga (Auditor General), p.4 87 *ibid*



**Fig 4: provides a summary of the Judiciary's rental obligations from 2013/2014 to 2014/2015 <sup>81</sup>**

Accrued Adjusted Rent expense B/F	Rent Accrued During the year under review	Total Rental Commitments	Amount Paid during the year	Accrued Rent commitment C/F
7,406,028,975	7,912,581,736	15,318,610,711	7,847,023,694	7,471,587,017



**Photo 1:** Ceiling that collapsed in Twed Towers (the building that houses the Constitutional, the Criminal and the Land Divisions of the High Court).



**Photo 2:** The Inaccessible Nakawa High Court Premises before it was closed. The premises didn't have ramps to enable the disabled access it.



**Photo 3:** The dilapidated building that houses the Kyegegwa Chief Magistrate Court Premises. On the day we visited goats were roaming around the court premises.

The services afforded to litigants, judicial officers, lawyers and the general public in some of these rented premises are not only far from adequate but also hazardous. In some instances ceilings have collapsed and in others, even basic sanitary services have broken down.<sup>82</sup> The hearing of the recent Presidential petition also brought to light a parallel danger to the security of judges who were also forced by the sanitary breakdown and the building's design, to share the same route as the general public.

Moreover, the delays that the Executive branch perennially exhibits towards the payment of its financial obligations creates a high eviction risk for the Courts of Judicature which are situated in rented premises. The Auditor General raised this concern in his report to Parliament on the 5th of December 2015 when he cautioned government against the non-payment of 7,471,587,017 in accrued rental arrears which he characterized as '*significant/material impact having a high likelihood of reoccurrence*.'<sup>83</sup> This is an indignity that the halls of justice can certainly do without. It is also noteworthy that only UGX 3bn was approved for the financial year 2015/16 to offset the accrued bills.

The sector is provided with a meager capital development fund which is woefully inadequate. Moreover, even the few sector-owned buildings are congested and therefore insufficient to meet the load. Take for example the High Court building where the Criminal Division sits. Constructed in 1936 next to the city square in Kampala, it was meant to accommodate only six judges.<sup>84</sup> However, today it houses not only the office of the Principal Judge, that of the Chief Registrar and the Criminal Division of the High Court but it also houses the Execution Division as well.

Moreover, there are no courthouse facilities guidelines which ensure standards of safety, accessibility and security and according to which courts are designed, built, maintained or rented. For instance, the Court of Appeal in Kampala is renting a building where there is a bar on one floor, a bank on another and a restaurant on the other while the High Court in Nakawa until recently before it was closed, was renting premises inaccessible to disabled people.

Furthermore, in the latter case, the utilization of facilities that hinder access by the disabled effectively discriminates against them, creating negative implications for Uganda's national and international human rights obligations. The physical structure of a courthouse is the most obvious factor affecting access to justice. In addition to the Constitutional right to equality (which the state is obliged to promote and respect),<sup>85</sup> Uganda ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and thereby undertook a legally binding obligation under international law to '*promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity*.'<sup>86</sup>

<sup>82</sup> During the recently concluded presidential election petition, the Supreme Court which is renting premises in Kololo was hit by a toilet crisis and court users were asked to go out into the predominantly residential neighborhood to relieve themselves. *Daily Monitor* 17/ March/2016

<sup>83</sup> Daily lives and corruption: public opinion in East Africa; <http://www.transparency.org/> last accessed on 26/1/16 **Emmanuel Mutaizibwa, 'Uganda: Temples**

<sup>84</sup> Wambuzi, *supra*, p. 142

<sup>85</sup> Art 21 of the 1995 Constitution stipulates that 'all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law' while Art 20 requires that 'the rights and freedoms of the individual and groups enshrined in this Chapter shall be respected, upheld and promoted by all organs and agencies of Government and by all persons.

<sup>86</sup> Art 1 of the United Nations Convention on the Rights of Persons with Disabilities



Under the convention, discrimination includes a ‘denial of reasonable accommodation’ which is defined to mean ‘necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.’<sup>87</sup> This means that the government of Uganda has an obligation to establish courts in structures with the necessary modifications and adjustments ‘to ensure that all persons with legitimate business before the court have access to its proceedings, court facilities need to be safe, accessible, and convenient to use.’<sup>88</sup>

The lack of adequate funding has also contributed to the slow pace of the implementation of the pilot electronic recording project. This has affected the quick disposal of cases because evidence has to be recorded/ transcribed manually in most courts. Indeed, the Judiciary has been slow to adopt technological advancements since these have been generally viewed as more of a privilege or pilot project reserved for particular courts (such as commercial court, supreme court) than a necessity.<sup>89</sup> The advantages of technology cannot be over emphasized and indeed the underperformance in our courts is partially attributed to a lack of electronic and/or digital equipment.

It should be acknowledged that the Judiciary has taken some strides to embrace technological aids in the administration of justice. The installation of video conferencing facilities at the Kampala High Court has enabled the provision of evidence via video-link and increased lead times<sup>80</sup>. It is reported in the JLOS Strategic Investment Plan (SIP) III Report that although SIP I and II promoted automated information management systems in the Judiciary, the impact across the board even in the institution remains small.<sup>90</sup>

The Judiciary should prioritize the adoption of technology if it is to perform efficiently in an age where socio economic changes have enabled court users to better access court services and courts to better fight increasing caseloads. The citizens are increasingly adapting to using technology to interact with the government. This is already partially evident in how they access services from Uganda Revenue Authority (URA) and Uganda Registration Services Bureau (URSB).<sup>91</sup> The Judiciary has generally lagged behind and most services such as filing, testifying, attending must be done physically.

The Judiciary is called upon to provide services of a kind and convenience that the public has come to expect from their experiences with the other branches of government and the commercial world. Court systems need to continue to identify key technologies courts need in order to become more efficient and effective in the delivery of judicial services. The new ICT Strategy of the Judiciary that provides for electronic filing, effective case management systems, video conferencing of court hearings, centralized and automated payable processes should be implemented as a step in the right direction. However, the pace at which these reforms are being adopted must be revisited.

<sup>87</sup> *Ibid*, Art 2

<sup>88</sup> National Center for State Courts, ‘Principles For Judicial Administration,’ July 2012, p. 16

<sup>89</sup> In many of the interviews the team conducted, judicial officers admitted to minimal use of technology aids. In up country courts, most officers stated that they did not have access to a court provided computer let alone an internet connection. A judicial officer was forced to fend for him or herself or do without. In the more privileged courts, systems boasted of at least one public address system.

<sup>90</sup> The Third JLOS strategic Investment Plan (SIP III) 2012/13-2016/17, P.15

<sup>91</sup> Citizens can register for a desired service online and prepare their own assessments for the resultant tax obligations without having to go to the offices physically. Although court fees can also be paid thus, the extent of the Judiciary’s employment of technology to ease access remains minimal.



## 2.4 CORRUPTION IN THE JUDICIARY

Systemic corruption within the justice system undermines human rights and public confidence in multiple ways. It is a direct defiance of the Rule of Law and of accountability. It involves the misuse of judicial authority for personal gain. The scourge is known to beset the justice system right from the commencement of a criminal investigation or the filing of a civil law suit, through the judicial process up to the enforcement of the court's decision.<sup>93</sup>

From our findings we discovered that most common forms of corruption within the judiciary relate to; payments of bribes either sought after by clerks and magistrates or offered by the accused, the litigant or the lawyer as an inducement to make certain decisions, the swearing of false documents, soliciting and getting favourable treatment and forging of court documents especially at the courts' registries.

Our findings correlate with those of the Perceptions of Corruption Index 2014 done by Transparency International. As determined by expert assessments and opinion surveys on a scale from 100 (very clean) to 0 (highly corrupt), Uganda was ranked 142 out of 175 countries selected globally for the assessment,<sup>94</sup> scoring an alarming 26 out of 100. It is particularly interesting to note that on a scale of 1-5 whereby 1 meant not corrupt and 5 meant very corrupt, the public perceived the Judiciary as being about 3.8 corrupt, coming second only to the Uganda Police.<sup>95</sup>

Indeed, an undercover report published almost two years ago revealed that corruption is common place in Uganda's Temples of Justice (especially Magistrates' Courts) that justice (or injustice) is on sale to the highest bidder and that public faith in the Judicial system has been undermined<sup>96</sup> Various organisations such as Anti-Corruption Coalition Uganda, the Inspectorate of Government (IGG) among others, have always ranked the Judiciary among the top two most corrupt government institutions in the country just behind the Uganda Police Force.

Generally the more open and bold corrupt cases of corruption in the Judiciary are in the lower courts. In Eastern Uganda one of the Magistrates has allegedly gained a notorious reputation to the extent that in one case he drafted pleadings for the plaintiff, also drafted a defence for the defendant then presided over the hearing of the case.<sup>97</sup> In a land dispute, another Magistrate in his judgment allegedly stated that both the plaintiff and the defendant had failed to prove their case that they were the owners of the land but he concluded his judgment by stating that the status quo be maintained.<sup>98</sup>

<sup>93</sup> Interview of Chief Justice Katureebe, *The Judiciary Insider*, supra, p.11

<sup>94</sup> <http://www.transparency.org/country/#UGA> last accessed on 26/1/16

<sup>95</sup> Daily lives and corruption: public opinion in East Africa; <http://www.transparency.org/> last accessed on 26/1/16

<sup>96</sup> Emmanuel Mutaizibwa, 'Uganda: Temples of injustice,' <http://www.aljazeera.com/programmes/africainvestigates/2014> last accessed on 26/1/16

<sup>97</sup> From the inquiries CEPIL conducted.

<sup>98</sup> Ibid

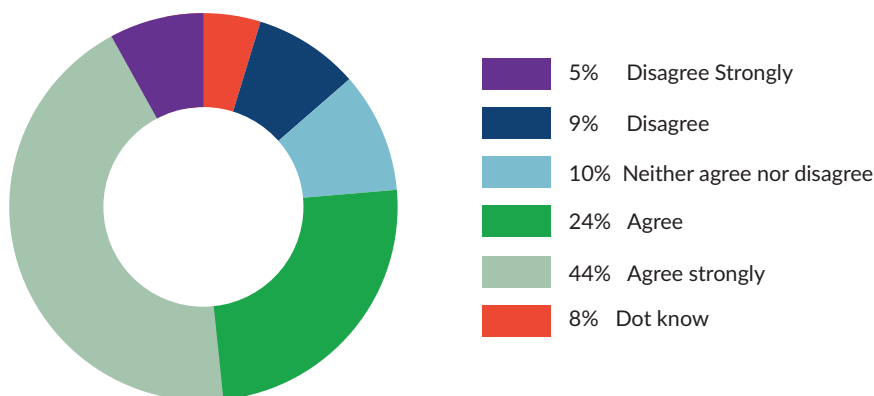


In yet another case in Gulu, the Magistrate was said to have been so blatant that he opted to hear the case of the defendant first even when the rules dictate that it is the plaintiff to first present his case. In many Magistrates' courts, litigants are allegedly punished for hiring lawyers to process bail applications. This is taken as denying the Judicial Officers an opportunity to directly extort money from prisoners. In some jurisdictions it is now common knowledge that an accused person should show up with a lawyer to argue their bail application.<sup>99</sup>

Although the instances identified were drawn from experiences in magistrates' courts, this is not to say that there is no corruption at the higher level. From the High Court to higher levels, the corruption is concealed because the key players are unwilling to expose the participants. The highlight of this concealment happened during the hearing of one of the election petition appeals after the 2011 elections when some Justices of the Court of Appeal revealed that they had been approached during the hearing of an election petition by one of the litigants with a bribe and that they had rejected it. Surprisingly, to this date, none of the culprits who attempted to bribe the country's second highest court of record have been prosecuted!

Such unresolved events have culminated into low levels of public trust and confidence in the Judiciary. The figure below reveals that the public's perceptions of the Judiciary in 2016 have not particularly altered since the 2014 publication by Transparency International. Asked whether Courts protect the Interests of the rich over those of the poor, 68% of respondents in the HiiL survey answered in the affirmative. The report revealed that 'justice users in Uganda experience limited fairness in the processes and outcomes on their justice journeys, particularly when they go through the formal justice system.'<sup>100</sup> It is noteworthy that the combined percentage of respondents who did not know, those who disagreed and those who neither agreed nor disagreed was significantly lower than that of those who agreed.

COURTS GENERALLY PROTECT THE INTERESTS OF THE RICH AND POWERFUL ABOVE THOSE OF ORDINARY PEOPLE



**Fig 5:** Responses to the question whether courts protect the interests of the rich and powerful people over those of ordinary people, <http://www.hiil.org/publications/data-reports> [last accessed on 11/7/2016]

<sup>99</sup> Ibid

<sup>100</sup> According to the HiiL report, the majority of respondents did not believe that the Ugandan courts are objective and neutral to all. *The Hague Institute for the Innovation of Law, supra*, p. 157

There is great concern among stakeholders in the justice sector that the vice of corruption is threatening the due administration of justice. On the 1st of February 2015, the Uganda Law Society (ULS) petitioned Parliament with a call for a Commission of Inquiry into the failures and malaise in the Judiciary and the legal profession.<sup>101</sup> The petitioners pointed to the allegations of corruption and unethical conduct by judicial officers.<sup>102</sup>

Recently, on his assumption of office, the Chief Justice Bart Katureebe requested Prof. George Kanyeihamba, Tamale Mirundi and Peter Mulira for information regarding cases of corruption by judicial officers within their knowledge. Only Prof Kanyeihamba and Mulira Peter availed names.

CEPIL followed up on several of these complaints with a view of establishing the depth of corruption in the Judiciary, its effects on justice delivery and the image of the Judiciary. The following are some of the allegations that were made against the judicial officers:<sup>103</sup>

#### **1. Complaints Against Magistrates**

Three magistrates were named as having committed acts of corruption. These acts ranged from taking bribes from litigants; operating a discotheque; and outright legal incompetence.

#### **2. Complaints Against High Court Judges**

Seven Judges were named and the complaints against them ranged from gross incompetence; fraudulent acts; ignorance of law; mishandling cases; delayed judgments and poor performance; refusal to order a call on witnesses and intimidation from doing the right thing.

#### **3. Complaints Against Court of Appeal/ Constitutional Court Judges**

Four judges were named for: illegally occupying the office of the CJ; incompetence; selective prosecution of suspects especially on political grounds; political bias especially always ruling in favor of the ruling NRM party and its supporters regardless of the subject matter.

#### **4. Complaints against Supreme Court Justice**

A Lady Justice was accused of having lied that she held a doctorate of Laws(LLD) at her time of the appointment whilst she had not yet acquired it. She was accused of incompetence, having her judgments written by other people outside the Supreme Court and delivering the same very late

According to press reports,<sup>104</sup> when the Chief Justice received these allegations, he presented them to the accused persons who then made specific responses to the allegations. The allegations plus the responses were then submitted to the internal disciplinary committee of the Judiciary. The committee's investigation found no evidence to pin the said judicial officers.

<sup>101</sup> *infra*

<sup>102</sup> *JLOS report, supra p. and intimidation from doing the right thing.*

<sup>103</sup> *This information was gathered from interviews that the team conducted between Dec.*

<sup>104</sup> <http://www.observer.ug/news-headlines/41920-corruption-kayeihamba-names-12-judges>



The committee also observed that some of the allegations made against the officers dated years back and had been investigated and dealt with at the time. This inclusive procedure of dealing with complaints on corruption in the Judiciary is preferred and was recently endorsed by the Constitutional Court in the case of **Hon. Justice Anup Singh Choudry v. Attorney General.**<sup>105</sup>

Our findings and recommendations in respect to the allegation cases are as follows:

1. That whereas it is important to fight corruption, it is equally important that the same is done without damaging the institution of the Judiciary.
2. That corruption in the Judiciary cannot be tackled in isolation. The vice of corruption in the Judiciary is a mirror of the general moral breakdown in society.
3. Most forms of corruption are now highly sophisticated with networks so discreet that documentary proof of malpractices is not easily accessible hence catching the culprits is becoming harder. Lawyers have become conduits for soliciting bribes and that partly explains why the ULS call to bell the cat remains unanswered to-date. It is also alleged that some legal practitioners in addition to their legitimate fees demand other fees from their clients purportedly to influence the judge or judges handling their cases. At times, the bribes they collect for and on behalf of such designated judges never come to their knowledge, let alone being delivered to them. In some cases, it is the activities of these unscrupulous legal practitioners who can be rightly described as interlopers that have given the Ugandan Judiciary a negative image.
4. The appointment and promotion of some dishonourable people not cut out to be judges should also be looked into. Many of the justices and judges in Uganda are hardworking, patriotic and honest and can compare favorably with judges and justices from any of the Commonwealth countries. However, there are some judicial officers who operate in an unprofessional manner. There is need for a concerted effort by all stakeholders to remove these black sheep from the Bench.

## 2.5 INTERNAL WEAKNESSES IN THE JUDICIARY

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### 2.5.1 CASE BACKLOG

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Case backlog remains a bottleneck to the right to a speedy trial. This right is one of the major facets of the fundamental right to a fair hearing and is the principle upon which the maxim “justice delayed is justice denied” was coined.<sup>106</sup> Indeed, principle 6.2 of the Uganda Code of the Judicial Conduct makes it mandatory for judicial officers to dispose of cases promptly and deliver judgment within sixty days.<sup>107</sup>

<sup>105</sup> Civil Appeal No. 0091 of 2012

<sup>106</sup> Serwanga M, ‘Justice delayed is justice denied,’ Saturday monitor July 2009 at page 5

<sup>107</sup> The Judicial Code of Conduct.

The causes of case backlog range from unnecessary adjournments, irregular attendance of court, insufficient manpower (judges, magistrates, and other court officials) to do the necessary work, insufficient funding that leads to failure to mount the necessary court sessions, a perforated justice system<sup>108</sup> and sometimes lack of stationery, inept case management, poor record keeping that results in loss of case files or other necessary records, and weak procedural laws that lead to delays.<sup>109</sup> The diversity of these causes suggests that the challenge is not an internal weakness per se. It can be attributed to the conduct/misconduct of members of the Judiciary and that of external stakeholders alike. It is nonetheless generally reported as an internal weakness in this report.

A recently concluded Court Census revealed that more than 114,512 cases are pending determination before courts throughout the country. According to results of the just concluded national cases census, they include 97 cases at the Supreme Court. Justice Henry Peter Adonyo, the Head of the task force of the National Case Census, revealed that a total of 5,844 Cases are pending before the Court of Appeal, High Court has 35,548 and the magistrates' courts have 68,115 cases pending as seen in the table below.

**Fig 6: Provides a summary of Pending Cases in all Courts in Uganda.**

Court Level	Anti-corruption	Civil	Commercial	Constitutional	Criminal	Executions and Bailiffs	Family	International Crimes	Land	Grand Total	%age
Supreme Court		45		15	36					96	0.08%
Court of Appeal		2,162		346	3,328					5,836	5.08%
High Court	257	10,723	2,604		8,518	3,708	4,512	15	5,976	36,313	31.63%
Chief Magistrates Court		10,660	1,560		22,661	4	2,834		8,227	45,946	40.02%
Magistrate Grade 1		1,794	435		10,017	1	894		2,600	15,741	13.71%
Magistrate Grade 2		1,303	305		7,661	2	353		1,253	10,877	9.47%
<b>Grand Total</b>	<b>257</b>	<b>26,687</b>	<b>4,904</b>	<b>361</b>	<b>52,221</b>	<b>3,715</b>	<b>8,593</b>	<b>15</b>	<b>18,056</b>	<b>114,809</b>	
<b>%age</b>	0.22%	23.24%	4.27%	0.31%	45.49%	3.24%	7.48%		15.73%		

This deficiency in service delivery has ultimately proven detrimental to the access and administration of justice.<sup>110</sup> The reputation of the Judiciary is also further undermined; as the public is skeptical about the ability of the Judiciary to serve it. The significant problem of case back log leads to grave and systemic hitches in judicial performance. As the judicial officers seek to clear older cases, new ones are piling up and soon build another cycle of backlog. The inability to clear all cases and dispense justice expeditiously leads to a rise in mob justice, substantial overcrowding of prisons and inordinate periods of pretrial detention.<sup>111</sup>

<sup>108</sup> The police are over stretched and so when a crime is committed, it may not be properly investigated and processed in a timely manner.

<sup>109</sup> For instance, a boy of 15 accused of murder spent two years on remand before he was found innocent by the court. On average, others spend about 5 years before their cases are taken to trial. The Ugandan schoolboy wrongly accused of two murders- <http://www.bbc.co.uk/news> last accessed 3/3/16

<sup>110</sup> According to the HiiL report, in the last four years nearly nine out of 10 Ugandans required access of some kind to the justice system, but their needs are not being met. The report revealed that on a scale of 1 (good) to 5 (bad), Ugandans rated 'time spent' in securing dispute resolution at over 3 while the resolution itself scored over 4. See Figure 7 infra p. 61

<sup>111</sup> Paul Gadenya Wolimbwa. 2011. The Role of the JLOS Case Backlog Reduction Programme: Achievements and Lessons Learned, <http://www.jlos.go.ug/uploads/Case%20backlog%20paper.pdf>



## 2.5.2 LACK OF JUDICIAL ACCOUNTABILITY

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It is now generally accepted that the Judiciary, like its counterparts in the Executive and the Legislature, must be held accountable to the discharge of its constitutional mandate. Judicial accountability, therefore, is the process by which the Judiciary is made responsible to the people on whose behalf it exercises the judicial power under the Constitution.<sup>112</sup> Indeed the Constitution buttresses this point when it provides that judicial power is derived from the people and shall be exercised in the name of the people and in conformity with law and with values, norms and aspirations of the people.<sup>113</sup>

The Constitution also provides for oversight by the establishment of independent scrutiny bodies and mechanisms such as the Public Accounts Committees and Auditor General to check the excesses of the Judiciary. These institutions deal with the internal workings of the Judiciary but do not effectively cater for accountability of the Judiciary to the people. Their role is seen as perfunctory for the Judiciary does not have clear initiatives in which it takes the gauntlet and formally makes a detailed periodic account to the people. It is hoped that the proposed Annual State of the Judiciary Report will go a long way in eliminating this challenge.<sup>114</sup>

However, in regard to its finances, the Judiciary must manage them and indeed account for them in accordance with recognized financial principles. This is the most obvious manner of enabling accountability to the public. *'Much like the measurement of court performance demonstrates a commitment to effective management, administering all funds in accordance with sound, generally accepted financial management practices maintains the court system's credibility.'*<sup>115</sup> Effective and reliable financial management practices must be adopted and applied to all types of funds administered by the courts including appropriated funds, revenues and fees received, grants and trust funds held on behalf of litigants or other parties.

Moreover, unlike the current external mechanisms which rely on generalizations like 'actual outputs in disposal of appeals' and thus fail to give an actual break down of the use to which every availed resource was expended, the Judiciary should make an account that is detailed enough to be self-sufficient and to account for all the resources availed.

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<sup>112</sup> Article 126(1)

<sup>113</sup> Article 126(1)

<sup>114</sup> The Judiciary Administration Bill 2012 requires the Chief Justice to 'publish an annual performance Report concerning all activities of the Judiciary during the financial year.' However, government has dragged its feet in the matter of this bill's enactment.

<sup>115</sup> National Center for State Courts, 'Principles For Judicial Administration,' July 2012, p. 14

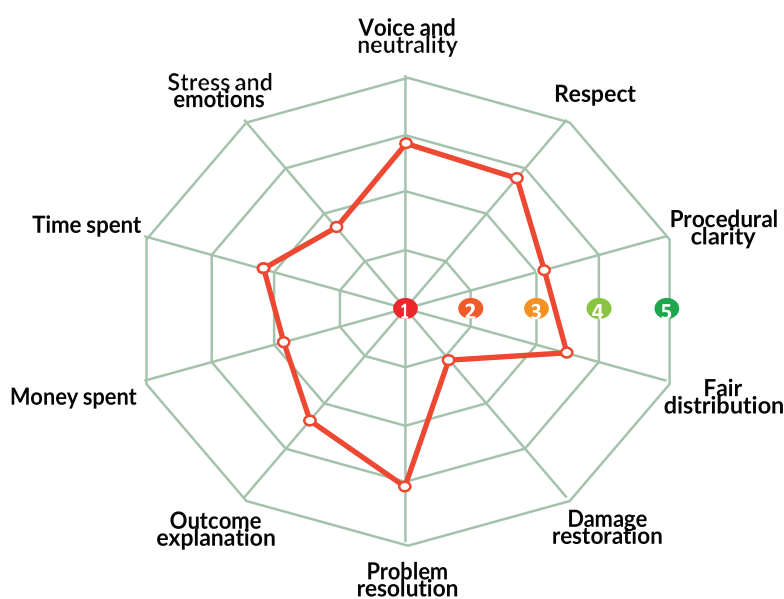
### 2.5.3 INEQUALITY AND DISCRIMINATION IN THE ADMINISTRATION OF JUSTICE

The Constitution declares that all persons are equal before the law and shall enjoy equal protection of the law. It further prohibits discrimination against people on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability.<sup>116</sup> Unfortunately, one of the constitution's most egregious violations in this regard is imbedded in the manner in which the Judiciary handles matters that have been filed in the Courts of Law. In most cases, justice is not dispensed on a first come first serve basis.

The court registries are rife with cases (both civil and criminal) whose hearing or disposal has been shelved for years. This is especially evident in criminal cases where pre-trial detention has orchestrated a 'legal' means so unconscionable that some accused persons have languished on remand only for their trials to reveal their innocence.<sup>117</sup> Others, although convicted are immediately released since their sentences are less that the time they have spent on remand.

The further travesty however is that while these long periods of remand ensue for some persons, the Courts are presiding over the cases of accused persons not only charged with offenses similar to those of their hapless counterparts but often charged subsequent to theirs. Similarly, in civil and constitutional matters, some litigants who filed their cases earlier in time watch impotently while the courts schedule, hear and even dispose of matters filed way after theirs. And so it happens that one must not only wait long for justice to arrive in Uganda but must also endure her penchant for discrimination.

The figure below illustrates this point:



FOR EACH PATH TO JUSTICE WE PLOT THE JUSTICE DIMENSIONS IN A SPIDER-WEB. ON THE SCALE 1 MEANS BAD AND 5 MEANS GOOD

Fig 7: A summary of the justice user's experience on the path to justice in Uganda, <http://www.hiil.org/publications/data-reports> [last accessed on 11/7/2016]

116 Art 21(1) (2) of the Constitution of the Republic of Uganda 1995.

117 For instance, a boy of 15 accused of murder spent two years on remand before he was found innocent by the court. On average, others spend about 5 years before their cases are taken to trial. The Ugandan schoolboy wrongly accused of two murders- <http://www.bbc.co.uk/news> last accessed 3/3/16



Figure 7 above 'measures each path to justice by asking the people about their experiences on their own paths to justice.' According to the HiIL survey, it is an assessment of the justice user's path to justice in Uganda. It reveals that on a scale of 1 (good) to 5 (bad), justice users in Uganda perceived and rated the 'fair distribution' of justice at about 3.5. This means that most justice users did not feel that justice was administered in accordance with 'needs, equity and equality criteria.'<sup>118</sup>

The average length of the stay on the remand for accused persons charged with capital offences is 11.4 and 10.5 months for 2012/2013 and 2013/2014 respectively.<sup>119</sup>

While it is agreed that certain matters, by law or public policy, merit favour over others,<sup>120</sup> there is no apparent justification for any further discrimination. It is therefore disconcerting to note the blatant discrimination with which certain matters are unjustifiably shelved in favour of others. The Constitutional Court's disposal of **Oloka Onyango & v Attorney General** which was filed on 11th March 2014, scheduled on 25th March 2014, heard in two days (30th and 31st the same month) and disposed of on August 1st 2014<sup>121</sup> proved that the Judiciary has both the ability and the capacity to hear cases expeditiously when it so chooses. This disposal is in contrast with several cases which have spent up to three years in the constitutional court registry without being heard and there is no apparent justification for the discrimination.

Indeed it is trite that in defining any derogation of a right guaranteed by the Constitution, precision and clarity are of the essence. For such to be acceptable and demonstrably justifiable in a free and democratic society there must be a yardstick, a 'limitation upon the limitation.'<sup>122</sup> Indeed, the Judiciary ought to develop a clear and precise yardstick to define matters which merit favour over others in scheduling, hearing or disposal and to require judicial officers presiding over such matters to justify their preference over those that were filed or instituted earlier in time. A good judicial system should not only ensure that unnecessary delays in its processes are purged but also that justice is expeditiously served to all on equal basis.

#### 2.5.4 UNDER PERFORMANCE

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There is a growing concern in the public domain that the members of the Judiciary are not delivering results. From the interview exercise carried out, some of the respondents cited incompetence, inability to make reasoned judgments and carry out research, failure to adopt new technology in the execution of judicial process, unethical conduct (delaying tactics), absenteeism by judicial officers, corruption (especially in terms of lost or missing files), unnecessary adjournments, loss of information due to delays in transcribing evidence (especially criminal), bureaucracy, unnecessary delays, case backlog and inept file and calendar management systems at the various registries as the prime ways in which the Judiciary has manifested its underperformance.

<sup>118</sup> The Hague Institute for the Innovation of Law, *supra*, p. 29

<sup>119</sup> JLOS Annual Performance Report 2013/2014, p.37

<sup>120</sup> These include election petitions and cases of terrorism.

<sup>121</sup> Constitutional Petition No. 08 Of 2014 [2014] UGCC 14

<sup>122</sup> Per Mulenga JSC in *Charles Onyango Obbo and Andrew Mujuni Mwenda v Attorney-General* SCCA No. 2 of 2002



Indeed, the statistics, as explained in the table below<sup>123</sup> reveal that the Supreme Court's, Court of Appeal's (and Constitutional court), High Court's and Magistrates Court's performance during the 2014/2015 year stood at 31.1% (28 out of 90 cases), 43.2% (268 out of 620 cases), 66.8% (10,430 cases out of 15,600) and 51.3% (66,688 out of 129839 cases) respectively. These statistics do not only reveal an *'escalated case backlog in the Judiciary'* but also attribute the underperformance to human resource inadequacies and lack of technological aids in the administration of justice. In fact, the Judiciary has admitted that *'the unimplemented activities majorly arose due to lack of headship in the first three quarters of the financial year which affected work in the Supreme Court, missing records on appeal in the Court of Appeal due to highly manual processes that affected the case disposal and lack of staff on the lower bench coupled with uncommitted lawyers.'*<sup>124</sup>

It is also clear from the table that the Judiciary did not fully utilize the resources extended to it for the purpose of case disposal. The statistics reveal that the Supreme Court's, Court of Appeal's (and Constitutional court), High Court's and Magistrates Court's financial performance during the 2014/2015 year stood at 71.6%, 74%, 73.3% and 74.6% respectively. Take for example the Supreme Court whose cost of planned output was 6.7 billion. Despite the fact that it disposed of only 28 of the 90 cases it had planned, it spent only 4.8 billion in actual output. This underutilization is also evident in the performance of other courts; the Court of Appeal spent only 5.4bn of 7.3bn, the High Court 19.5bn of 26.6bn while the Magistrates Courts spent only 18.2bn of the planned 24.4bn.

123 Figure 8, *infra*

124 *Ibid*, p.6



**Fig 8: Provides a summary of the Judiciary's performance during 2014/2015**

Activity	Description	Planned Output	Actual Output	Under performance	% performance	Cost of planned output	Cost of Actual output	% performance
<b>Disposal of Appeals in the Supreme Court</b>	Civil Appeals	35	18	49%	31.1%	6.7 bn	4.8bn	71.6%
	Criminal Appeals	45	5	88.9				
	Constitution Appeals	10	5	50%				
<b>Disposal of Appeals and Constitution Matters in the Court of Appeal</b>	Civil Appeals	200	151	24.5%		7.3bn	5.4bn	74%
	Criminal Appeals	400	97	75.8%				
	Constitution Appeals	20	20	-				
<b>Disposal of Appeals and Suits in the High Court</b>	Appeals	600	208	65.3		26.6bn	19.5bn	73.3%
	Suits	14,400	10,222	29%				
	Persons Offered legal aid through justice centres	600	0	100%				
	Small claims Procedure further rolled out	Targeted figure not indicated	0					
	Information Desk set up in selected courts	Targeted figure not indicated	0					
	Public relations strengthened	Targeted figure not indicated	0					
	Mediation strengthened through Justice centres	Targeted figure not indicated	0					
<b>Disposal of Suits and Appeals in the Magistrate Courts</b>	129,839 suits disposed of in Magistrate Courts;	129,839	66,688	48.6%		24.4bn	18.2bn	74.6%
	Guidelines for Management of Registries developed;	Targeted figure not indicated	0					
	Open days conducted	Targeted figure	0					

This under-performance has not been helped by the reluctance of some judicial officers to embrace the Judiciary's proposed performance management system on the basis that this is an affront to the independence of the Judiciary. Performance management as understood within the context of the Judiciary includes activities, which ensure that goals are consistently being met in an effective and efficient manner. It should be noted however that robust judicial performance is, dependent on having an effective monitoring, evaluation and under performance management framework – which provides a mechanism for measuring court, the out puts and inputs with clear indicators and targets at input, output and outcome levels.

## 2.6 THE INCAPACITATION OF LOCAL COUNCIL COURTS

This report opines that the Ugandan Government's failure to hold Local Council elections since 2001 has ramifications for both the incapacitation of said courts and the erosion of the due administration of justice.

As part of its mandate to create subordinate courts, Parliament created Local Council Courts at every village, parish, town, division and sub-county level.<sup>125</sup> Although they are less formal,<sup>126</sup> these Courts form part of Uganda's Judiciary. They consist of persons of good morals and integrity who are resident in the area of jurisdiction of the council for which the court is appointed and are knowledgeable in both the common local language of the community in question and in English.

For these reasons and more,<sup>127</sup> Uganda's predominantly rural society favours and trusts Local Council Courts as a just and accessible mode of dispute resolution.

<sup>125</sup> S. 3 of the Local Council Courts Act, 2006.

<sup>126</sup> Unlike the main stream courts of Judicature, advocates are generally not required or permitted to represent parties during the hearings. See s. 16 (2) *ibid*

<sup>127</sup> They apply familiar customary norms to relevant property, inter-state inheritance, and marital disputes and have jurisdiction over limited civil matters and petty criminal offences.



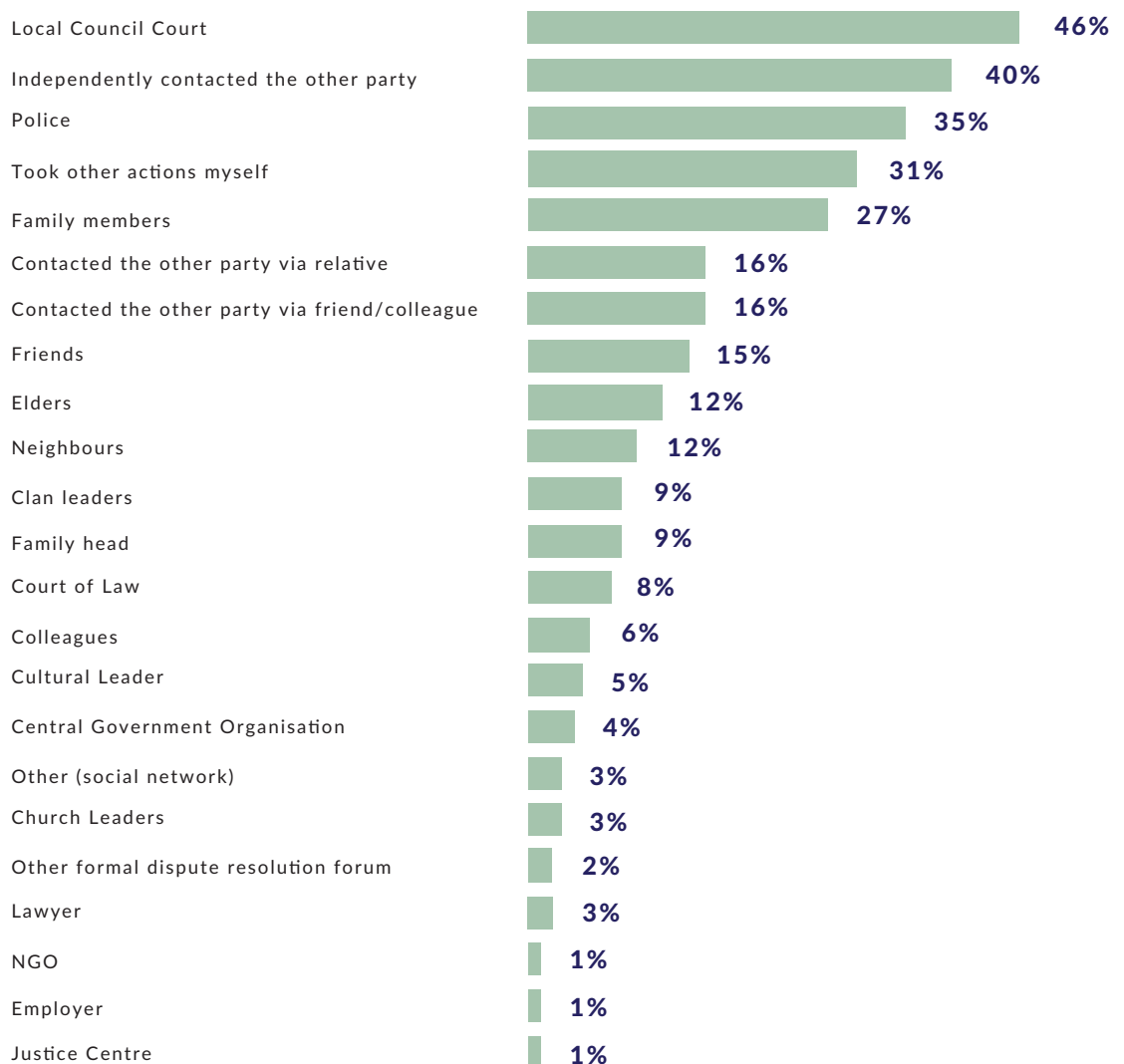
Figure 9 below reveals that Ugandan citizens experience the LCCs as an effective dispute resolution process while figure 10 compares the public's perception of them to its perception of the main stream courts;

	Total	Female	Male
Local Council Court	19%	19%	18%
Family members	19%	19%	17%
Police	17%	17%	17%
Other	11%	10%	10%
Friend (s)	10%	10%	12%
Famaily head	5%	6%	3%
Neighbour	5%	5%	4%
Elders	5%	5%	4%
Clan leader	3%	3%	4%
Court of law	3%	3%	3%
Colleagues	5%	5%	4%
Church leader	2%	2%	1%
Central Government	2%		
Organisation		2%	2%
NGO	1%	1%	1%
Cultural Leaders	1%	1%	1%
Lawyer	1%	0%	1%
employer	0%	0%	19%
Do not want to answer	1%	1%	1%

Fig 9: Shows the sources of information that people resort to when seeking for a course of action towards resolving a given problem, <http://www.hiil.org/publications/data-reports> [last accessed on 11/7/2016]

Figure 9 above is a summation of the percentages of Ugandan Citizens that resort to various dispute resolution mechanisms for information and advice. The data collated showed that 19% of Ugandan Citizens resort to Local Council Courts for information on the resolution of their disputes. This was the largest number; higher than the number which resorted to courts, police, NGOs, family and clan members, church, family and clan heads, colleagues, employees, lawyers and friends. It is noteworthy that the percentage of persons who resort to courts was recorded at 3%. Clearly, the majority of Ugandans seek information and advice from their social network and from the Local Council Courts. It is also particularly interesting to note that the report had earlier correlated the mechanisms of resort to the trust and confidence a justice user has in them.<sup>128</sup>

#### MULTIPLE DISPUTE RESOLUTION STRATEGIES



**Fig 10:** Shows the percentages of the institutions or other entities that were resorted to for dispute resolution

<sup>128</sup> *Infra*, p. 27.



Figure 10 reveals that the trend set by figure 9 is maintained by the public in the selection of mechanisms for actual dispute resolution. 46% of members of the public entrust Local Council Courts with the resolution of their disputes compared to the 8% which entrusts the courts with theirs. It is interesting to note that both the percentages for Local Council Courts and those for courts increase. Although the latter remains significantly lower, it is clear that more people resort to courts for actual resolution (8%) than those who resort to them for advice (3%). Nonetheless, the percentages remain higher on both counts for the Local Council Courts and this means that members of the public generally resort more to the Local Council Courts than they do the main stream courts.

Despite the far reaching implications that the local council courts' existence has on access to justice, government has reneged on its constitutional duty<sup>129</sup> to enable their existence and to assist the courts in the performance of their mandate.<sup>130</sup> Village (which are the default local council court of first instance) and Parish Local council courts are comprised, inter alia, of elected executive committees.<sup>131</sup> However, local Council elections at village (LCI) and parish (LCII) have not been held since the 2001 general election. 'These village leaders' terms of office therefore expired 10 years ago on May 12, 2006.<sup>132</sup> In fact, the continued operation of these LC 1 and LC 11 courts have, pending the holding of fresh elections for Executive Committees, been declared unconstitutional.<sup>133</sup>

In the face of this obstacle, Local Council Courts have more or less been disabled. Whereas the government has continued to hold elections for LC 111 and LC 5, the courts that those officials help to constitute<sup>134</sup> are only vested with appellate jurisdiction. The jurisdiction of Local Council Courts is such that judgment and orders of a Village Local Council Court are appealable to a parish Local Council Court whose judgment and orders are in turn appealable to a town, division or sub-county council court. It is from the latter's that one can appeal to the Chief Magistrate.<sup>135</sup> Therefore, with the failure to legally constitute the village and parish courts, the operation of the appellate courts is only limited to matters which were filed and determined at first instance before the 12<sup>th</sup> of May 2006.

In view of the challenges that they constantly face, the wheels of justice require the assistance of the more preferred and accessible Local Council Courts to coexist with the efforts of their mainstream counterparts. Indeed, government should arguably be relying on the public's statistical preference for the former, to strengthen and further enable their work in the delivery of justice. One therefore finds that this failure, refusal or neglect (*however described*)<sup>136</sup> has not only stifled the operation of the public's most preferred avenue for legal recourse but has also frustrated the due administration of Justice in Uganda.

<sup>129</sup> Art 1 (4) of the Constitution vests in the people a right to 'express their will and consent on who shall govern them and how they should be governed, through regular, free and fair elections.' Art 61 (1) (a) requires the Electoral Commission 'to ensure that regular, free and fair elections are held.'

<sup>130</sup> Art 128 (3) of the Constitution enjoins all organs and agencies of the State to accord to the courts such assistance as may be required to ensure their effectiveness.

<sup>131</sup> S. 4(1) of the Local Council Courts Act requires that the local council court of a village or parish consist of all members of the executive committee of the village or parish.

<sup>132</sup> 'Why government is reluctant to hold LC1 polls,' Daily Monitor Thursday March 24 2016

<sup>133</sup> Rubaramira Ruranga Vs, Electoral Commission The Attorney General Constitutional Petition No.21/2006

<sup>134</sup> According to s.4(2) of the Local Council Court's Act, the composition of a local council court of a town, division or sub-county is made up of appointees of the town council, division council or sub-county council. The respective executive committee merely make recommendations.

<sup>135</sup> Section 32 (2) Local Council Courts Act 2006

<sup>136</sup> The government has continuously stated that it lacks sufficient resources to conduct these elections.

## 3.0 PROSPECTS FOR REFORM

Government has made several strides towards a more effective system of administration of justice such as;

### 3.1 ADMINISTRATION OF JUSTICE BILL, 2014

This is a private member's Bill<sup>137</sup> which aims at improving the administration of justice and the efficiency of the court system.<sup>138</sup> The Bill is commended for its intended operationalization of the constitutional principles of judicial independence, accountability and efficient administration. It was drafted as a private members bill following the Government's delay to present its own. However, as soon as the motion was read in Parliament, Government through the Attorney General requested that they take over the process and he promised to introduce the Government Bill, which up to the point of publication of this report had not been introduced.

This Bill is a major prospect for the reform of the Judiciary in the following ways;

- a) The Bill makes provision for an Advisory Body. This is a commendable step as it seeks to provide a mechanism of insulating judges from the Executive.
- b) It will provide the Judiciary with some much needed financial autonomy. It mirrors the constitutional mandate that the administrative expenses<sup>139</sup> of the Judiciary be charged on the Consolidated Fund. It is noteworthy that whereas the bill permits the Chief Justice to prepare the judiciary's financial estimates and to submit them to the President, the President has no powers to revise those estimates before forwarding them to Parliament. The bill will also permit the Judiciary to open its own bank accounts into which it can pay and subsequently manage its own funds. These provisos effectively withdraw the judiciary's budget from the control of the Ministry of Justice and Constitutional Affairs. The recently passed budget places the Judiciary under the wider JLOS budget but it ignores the fact that the Judiciary accounts for 1% of the national budget despite the fact that it is the third arm of Government.
- c) The Bill is also appreciated for streamlining in house administration. The bill empowers the Chief Registrar to oversee judicial operations of all courts, to oversee registries, to monitor the quality of service, ensure the implementation of the Judiciary Strategic Plans and core activities with the Secretary to the Judiciary and to assist the Chief Justice, Deputy Chief Justice and the Principal Judge in the facilitation and supervision of Courts of Judicature.

<sup>137</sup> Hon Okot Ogong (NRM, Dokolo County) <http://www.parliament.go.ug/enewsletter/monday-april-14-2014-friday-april-18-2014>

<sup>138</sup> Judiciary Administration Bill 2014, memorandum <http://www.judicature.go.ug/files/downloads>

<sup>139</sup> Including all salaries, allowances, gratuities and pension payable to or in respect of persons serving in the Judiciary, Art 28(7) Constitution



The bill also aims at improving administration by ensuring the competence of the Chief Registrar and Deputy Chief Registrar to do so. They must be eligible for the appointment as a Judge of the High Court, to have served for at least ten years as a professional qualified Judicial Officer and to have attained relevant qualifications in management of public office and to have at least three years' experience in handling public matters.

### 3.2 THE LEGAL AID BILL, 2011

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The Legal Aid Bill 2011<sup>140</sup> is the culmination of recent efforts to streamline the provision of legal aid services in Uganda and to encourage state participation in their enforcement. The concept of access to justice is among the challenges that have inhibited the Judiciary from effectively delivering on its mandate to dispense justice to all.<sup>141</sup> This challenge has largely been attributed to the fact that there has been no comprehensive or specific legal aid framework regulating the legal aid sector in Uganda. And so at the annual Justice Law and Order Sector (JLOS) Review of 2008, an undertaking to develop a National Legal Aid Policy and institutional framework was adopted.<sup>142</sup> The Bill is a formulation of these efforts. Although its passing is long overdue, it is commended for the reforms it proposes to make in the law relating to access to Justice.

The Bill seeks to establish a Legal Aid Council which is to provide, administer, coordinate and monitor accessible, affordable, sustainable, credible and accountable legal aid services in civil and criminal cases. The Council is to be composed of a judge (chairperson), representatives from concerned ministries and Law Council, the president of Uganda Law Society and various experts in the provision of legal aid services who are to be appointed by the Minister and approved by Parliament.

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The Bill also aptly describes the persons who qualify (the indigent) and the circumstances in which they qualify for legal aid services (in so far as the *'interests of justice so require'*) The Bill further provides for the right, at the time of deprivation of liberty and prior to any questioning, for persons to be informed of their right to legal aid and other procedural safeguards and of the consequences of voluntarily waiving those rights.

<sup>140</sup>Legal Aid Bill 2011 <https://namati.org/wp-content/uploads/2013/06/Uganda-2011>

<sup>141</sup>According to the HiiL survey, 'formal sources like lawyers (1%) are considered to be helpful for only a very marginal group of people.' It reported that 97% of lawyers in Uganda are based in Kampala, whereas 94% of the population lives outside of the capital, and has only the 3% remaining lawyers to its disposal. **The Hague Institute for the Innovation of Law**, *supra*, p.68

<sup>142</sup>This policy was prepared and published in 2012. It recommended, *inter alia*, 'the consolidation of the legal framework on legal aid in one comprehensive Act' and 'the establishment of an independent legal aid body to provide a comprehensive framework for legal aid service provision nationally'



It describes the persons and the circumstances in which those persons may be employed by the council to provide legal services, their duties, the institution and effective resolution of disciplinary processes against them and the creation, management of a fund to help government provide legal aid services countrywide.

It also addresses the role of important service providers such as civil society and NGO entities, magistrates, and quite significantly, the involvement of community based resource persons – paralegals. It also regulates the accreditation of legal aid service providers. The Government should prioritize this bill as a worthy reform in enabling access to Justice by the majority who cannot afford the cost of legal services.

### 3.3 PREPARATION OF A PERFORMANCE ENHANCEMENT TOOL

In recent times, a debate has ensued over the need for a comprehensive and effective means of monitoring the performance of members of the Judiciary. This concept arose from the larger Constitutional dictate of Judicial and indeed government accountability. However, while this task poses no inherent contradictions for other arms of government, the perfection of such a means for the Judiciary demands that a delicate balance be struck between accountability and independence. For this reason, the Judiciary has struggled to design an effective tool for monitoring the Judiciary's performance and in fact, although variations and adjustments have been made, the ultimate tool is yet to be rolled out. Nonetheless, the admission of this need and the Judiciary's preparation in this regard are a prospect for reform.

The performance enhancement tool<sup>143</sup> that has been designed adopts a 360 degree evaluation approach and appoints November – December of each year as the period of assessment. Performance standards and measures based on accessibility, timelines, staff quality and integrity were developed for judicial officers in superior courts, registrars, magistrates and administrative departments. The measures also employ a weighting system for each kind of judicial work and these were developed both in consultation with major stakeholders but also with guidance from international benchmarks. The tool is expected to be automated, web based and password operated. The tool also expects that judicial officers will be evaluated by their supervisors, peers, subordinates and court users.

The tool is commended for its attempts to cater to the various intricacies of judicial work and although its effectiveness is yet to be proven, it is expected to improve performance and is a worthy prospect in the clamor for judicial accountability. It is commendable that even before the tool takes root, some judicial officers are taking to doing their own assessment.<sup>144</sup>

<sup>143</sup> Hon. Justice Elizabeth Jane Alividza, 'Performance Enhancement Tool,'

<sup>144</sup> Abim Magistrates Court has a monthly reporting tool for the heads of station which each judicial officer fills in and submits to the Head of station.



### 3.4 SMALL CLAIMS PROCEDURE

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One outstanding innovation that has been introduced within the magisterial courts is the concept of Small Claims Procedure, a pioneering and transformative intervention.<sup>145</sup> It generally targets claimants of a subject matter which is less than 10 million shillings; focusing less on technicalities and more on access to justice. The Concept was engineered with a view to being simple, faster and affordable. The project is now active in about 26 courts and *'data available for 2012/13 shows that the clearance rates are higher within the SCP pilot than in the civil justice system as a whole. Data from subsequent years shows that this trend continues.'*<sup>146</sup> Indeed, its performance was reported to *'elicit a high level of user satisfaction'*<sup>147</sup> so much so that the Judiciary won the Public Sector Innovations Award for the first time in judicial history.<sup>148</sup>

An assessment that was conducted by the Law and Development Partnership indicates that the innovation that the Small Claims Procedure programme has brought to the Judiciary has improved the turnaround time for resolution of conflicts and reduced the backlog on courts. For instance, 86% of the cases registered in Mengo Chief Magistrates Court demonstrated an average case disposal time of 2 months for 58% for the caseload. The rates improved at a rate of 3-4% per annum. Pilot Studies outside Kampala were found to dispose of cases on average in under 2 months, with documented cases disposed of in a record time of 1-2 days.<sup>149</sup> It confirmed that the case disposal rate of Small Claims exceeded its target of 5% by the end of the pilot period.

The evaluation further confirms that the simplification of procedures bears significant potential for similar disputes beyond commercial claims, with the possibility of increased access to justice for claimants whose cases may not reach the formal justice system.

### 3.5 THE ESTABLISHMENT OF JUSTICE CENTRES

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In December 2009, the government of Uganda, under the Justice Law and Order Sector established the Justice Centres Project. Its mission was to *'promote the rights of vulnerable communities through the provision of quality human rights based legal aid, legal and rights awareness, community outreach, empowerment and advocacy.'* Today, the project runs 4 fully fledged Centers (Lira, Tororo, Hoima, and Mengo) and 3 Service Points (Masaka, Jinja, and Fort Portal). With 97% of lawyers in Uganda being based in Kampala, the country lacking a comprehensive nation legal aid framework and the incapacitation of the public's more preferred and accessible legal recourse, the establishment and operationalization of Justice Centres is a great prospect for reform.

Justice Centres are hosted and supervised by the Judiciary. They therefore present great opportunities through which the Judiciary, as the institution mandated to deliver justice can play a direct role in the actual improvement of access to Justice.

145 The concept was established by the Judicature (Small Claims Procedure) Rules SI No 25 of 2011

146 Ibid, p.16

147 Turnaround time greatly influences user satisfaction and the former, is in SCP cases, encouraging. The evaluation team of the SCP project reported that it places the Judiciary on track in attaining greater public confidence and credibility as envisaged in Article 126 of the Constitution of Uganda.

148 The Small Claims Procedure won the 2013 Annual Public Sector Innovation Award.

149 Law and Development Partnership, 'Evaluation of Small Claims Procedure Pilot Project,' October 2015, p.10

However, while the creation of these centres is greatly commended, their impact on society remains low. At the moment, there are over 111 districts in Uganda and the establishment of Justice Centre points in only 7 districts is bound to produce minimal quantitative results. Moreover, further research has indicated considerable gaps between the potential of legal aid service providers (like Justice Centres) to improve access to justice and the public's knowledge and understanding of how to access these services.<sup>150</sup> Most people do not know that these services exist or that they can access them. Again, this can affect the qualitative impact of these services.

Nonetheless, the potential that Justice Centres have for improving access cannot be gain said and the qualitative impact of improving access under the supervision of the Judiciary is expected to be high. Although challenges abound, this remains a great prospect for reform. As the HiiL report has found, *'the majority of citizens currently have only limited access to legal information and aid, and increasing the presence of Justice Centres in different districts represents a great opportunity to make access to justice a reality for the vulnerable population.'*<sup>151</sup>

### 3.6 THE JLOS STRATEGIC INVESTMENT PLAN

The government's adoption of a sector wide approach to the administration of Justice is one of the greatest prospects for justice reform in Uganda. This approach takes the form of an umbrella *'organisation'* commonly referred to as the Justice Law and Order Sector (JLOS). Comprised of over 15 institutions,<sup>152</sup> JLOS has opted to centralize budgeting, planning and implementation of policies concerning the protection and enforcement of human rights and the delivery of justice. Since its inception, the approach has been lauded for the strides taken in improving service delivery and access within the formal justice system.

The JLOS Strategic Plan for the period 2012/2013 to 2016/2017 concentrates on strengthening policy and legal frameworks for effectiveness and efficiency; enhancing access to JLOS services, promoting institutional and individual accountability and driving the country towards a deeper observance of human rights.<sup>153</sup> These objectives resonate soundly with the mandate of the Judiciary to administer justice quickly and fairly to all, promote accountability and respect human rights. It also reflects a recognition of the impediments to accessing justice in Uganda.

For instance, the SIP III's target for 2016/2017 and dispensing is to strengthen the independence of JLOS institutions and judicial processes by 25%.<sup>154</sup> For the Judiciary, increasing independence would undoubtedly improve its capacity to administer justice to all without fear or favor which in turn would improve access.

Moreover, the SIP 111 has purposed to improve effectiveness and service delivery standards in the Judiciary by reducing the average case load by 50%.

<sup>150</sup> *The Hague Institute for the Innovation of Law, supra, p.89*

<sup>151</sup> *The Hague Institute for the Innovation of Law,*

<sup>152</sup> *The sector comprises of: Ministry of Justice and Constitutional Affairs (MOJCA); Ministry of Internal Affairs (MIA); The Judiciary; Uganda Police Force (UPF); Uganda Prison Service (UPS); Directorate of Public Prosecutions (DPP); Judicial Service Commission (JSC); The Ministry of Local Government (Local Council Courts); The Ministry of Gender, Labor and Social Development (Probation and Juvenile Justice); The Uganda Law Reform Commission (ULRC); The Uganda Human Rights Commission (UHRC); The Law Development Centre (LDC); The Tax Appeals Tribunal (TAT); The Uganda Law Society (ULS); Centre for Arbitration and Dispute Resolution (CADER) and The Uganda Registration Services Bureau (URSB)*

<sup>153</sup> *The Third JLOS strategic Investment Plan (SIP III) 2012/13-2016/17*

<sup>154</sup> *Ibid, p. 62*



From our findings, there is no doubt that many judicial officers are overwhelmed and that this has triggered absenteeism and general under-performance in some cases. Indeed, there is also a proposal to reduce backlog by 20%; a reform which is indelibly linked to case load.<sup>155</sup> If implemented hand in hand with an increase in recruitment, these objective would go a long way in bridging service delivery gaps especially in the lower courts.

In the case of Local Council Courts, JLOS has not only identified them as instrumental in the administration of Justice but has also planned to improve their effectiveness by achieving a 30% reduction in appeals from LC Courts which are referred for retrial.<sup>156</sup> These are just some of the targets that the SIP III has made toward improving the performance of the justice system and the Judiciary.<sup>157</sup> Others include a 30% proportion of cases settled through ADR, an 80% proportion of small claims settled within set time standards, a 2% increase in the proportion of Judiciary non-wage operational budget (1%) spent on state briefs.<sup>158</sup>

The SIP III recognises the role that other stakeholders play in supporting the Judiciary.<sup>159</sup> Its efforts to plan for the formers' effectiveness are therefore great prospects for reforming the justice system.

## 4.0 RECOMMENDATIONS AND CONCLUSION

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These are the overall recommendations that will form the basis of the advocacy work for CEPIL and other interested stakeholders to ensure that the Judiciary is realigned for purposes of enabling it to exercise its constitutional mandate. Particularly, we call upon the target audience of each recommendation to take up its implementation.

### 4.1 APPOINTMENT AND SELECTION PROCESS OF JUDICIAL OFFICERS

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Target audience: **Judicial Service Commission, Executive, Parliament**

We propose that the judicial appointment process be reformed as follows:

- a) The Judicial appointment process should be reviewed with the aim of ensuring an interactive and transparent system. The involvement of key stakeholders particularly the legal fraternity in the process of independent screening of the candidates in judicial appointments will go a long way in creating an accountable Judiciary.
- b) Judicial selection should involve independent screening of candidates based on prior publication of objective selection criteria and the Judicial Service Commission should carry out extensive studies and research on individual candidates before they are appointed to judicial office. Competence in terms of a good grasp of the

155 According to Justice Katureebe, the current caseload for every High Court judge is about 1,229 cases, JUDICIARY INSIDER | April - October 2015, p.23.

156 The Third JLOS strategic Investment Plan (SIP III) 2012/13-2016/17, p.65

157 Recognizing the low disposal rate of complaints against judicial officers (12% in 2010/2011), JLOS has targeted a 65% disposal of registered cases by the Judicial Service Commission, *ibid*, p.68)

158 *Ibid*, p.67

159 Outcome 1 of the SIP III is to strengthen 'Policy, Legislative and Regulatory Framework.' Under this outcome, the Legal Aid Act and the Judiciary Administration Act have been singled out for priority.

law, appreciation of legal issues, a solid track record in competence and the ability to be decisive should be prioritized.

- c) The Judicial Service Commission should not relegate itself to compiling a list from which the Executive selects. Rather, the number of candidates that the Commission recommends and forwards to the Executive should tally with the number and rank required as communicated by the Judiciary.
- d) That the Judicial Service Commission (JSC) thoroughly and effectively investigate complaints of judicial misconduct and involve the public in the disciplinary processes of judicial officers to the extent that justice shall not be compromised.
- e) The Judicial appointment processes be rationalized in such a way that serving and career judicial officers who are competent be given priority in order of seniority and experience. This way, the system would not only reward its long serving staff but also encourage a more organic process of individuals serving right from the grass-roots and magisterial areas.
- f) That the Judicial Service Commission be composed of at least 6 full time members to ensure that quorum is more easily met and the Commission performs its role more efficiently and expeditiously.
- g) That Parliament operationalizes the provisions of the Constitution which relate to the Judicial Service Commission's independence by enabling it to have full control and autonomy over its finances.
- h) That government increase the financial and operational support rendered to the Judicial Service Commission so that it is enabled to perform its Constitutional mandate.
- i) That the heads of the respective courts to wit Chief Justice, Deputy Chief Justice and Principal Judge be included as ex-officio members of the Judicial Service Commission.
- j) That the Commission embrace transparency and respond to requests properly made for information concerning its processes.

## 4.2 THE CASE FOR INCREASED FINANCIAL, HUMAN AND INFRASTRUCTURAL SUPPORT

Target Audience; Executive (Cabinet, Ministry of Finance), Parliament, Judiciary

The budgetary allocation of the Judiciary should be proportionately increased and the Judiciary should be allowed to enjoy the autonomy granted by other arms of government over their finances. This will go a long way in sorting out the key challenges facing the Judiciary and will enable the following issues to be dealt with;



- a) Infrastructural reform particularly the construction and renovation of court houses and accommodation especially for judicial officers presiding over upcountry courts. Government needs to shelve the culture of renting premises and focus on the construction of its own to avoid wasteful expenditure.
- b) Recruit more judicial officers so as to address case backlog and to enable the decentralization of the Court of Appeal, the creation of more High Court circuits and the establishment of courts in the newly created districts.
- c) Invest in automation of management information systems and training with a view to change institutional cultured red tape so as to improve service delivery in the sector. The ICT Strategic Plan for 2014-2018 should be fully funded to ensure the adoption of ICT in our Courts of Law.
- d) Prioritize the growth and facilitation of its library and information services by enabling the Judicial Studies Institute to become a fully-fledged conference and training center even for post graduate studies just like its sister body the South Africa's Judicial Education Institute. Every court house should have access to the internet and at least a set of the Blue and Red Volumes.
- e) Prioritize and also make a deliberate effort to improve the salaries and facilitation availed to judicial officers and their non-judicial staff so as to improve performance, motivation, commitment and safeguard against corruption. An office in charge of their welfare should also be set up at each designation.
- f) Consider availing the members of the Judiciary with a living wage by which they can comfortably and adequately live.
- g) Prepare and adopt courthouse facilities' guidelines to ensure that responsible entities design, build, maintain and rent courts facilities that are safe, secure and accessible.
- h) Every Judicial officer should have access to a set of Red and Blue Volumes, a computer and an internet connection; all availed by the Judiciary. Moreover, every judicial officer should have access to a legally educated assistant.

### 4.3 TACKLING CORRUPTION IN THE JUDICIARY

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Target Audience; **Civil Society, Judiciary, Public**

- a) There is need to continue advocating for the increased autonomy of the Judiciary in terms of more provision of financial support to enable the Judiciary have a conducive environment to deliver justice.
- b) The benchmarks for finding judicial officers corrupt should be extended. The tests and criteria adopted, in addition to the usual allegation of corruption to which the judge may answer with the typical contention of lack of evidence should be that the judgment(s) or order(s) of the judge or justice, as the case may be should be subjected to scrutiny and if found correctly determined, the officer should be allowed to return to the Bench. But if the judgment(s) or order(s) are found wanting or directly fly in the face of the law or facts or both, the judge should be investigated for corruption

or incompetence and this should, in proper cases, form a basis for finding the judicial officer unsuitable for the position they hold. Such officers should be thrown out of the country's judicial system. Clearly, this approach does not provide room or opportunity for crass technicality.

## 4.4 ENHANCING JUDICIAL ACCOUNTABILITY

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Target Audience; **Judiciary, Parliament**

From the foregoing discussion for the Judiciary to effectively account to the people, it should adopt external accountability mechanisms<sup>160</sup> such as;

- a) The Judiciary should deliver to the nation a periodic statement on the State of the Judiciary and this statement must, inter alia, account for the resources that were availed to it during the reporting period.
- b) The leadership of the Judiciary should administer funds in accordance with sound, accepted financial management practices.
- c) Parliament and subsequently the Judiciary should do away with the sub judice rule and allow the public to scrutinize their actions.
- d) A Communications Department within the Judiciary should be strengthened with a mandate to create awareness and handle all the communication needs of the judiciary. Court Public Relations Officers should be deployed within all court buildings in order to provide litigants and members of the public who attend court proceedings with information on court procedures and processes and also directional information.
- e) When supporting the establishment of these systems, it is important to help courts develop the confidence to allow public access to as much information as possible. Thus external monitoring of courts can be a powerful tool for enhancing judicial accountability.

## 4.5 ACCELERATING JUDICIAL PERFORMANCE

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Target Audience; **Parliament, Executive, Judiciary, Media, Public, Uganda Law Reform Commission**

In order to ensure judicial performance, the following are proposed:

- a) The utilization of retired judicial officers should be pursued as their vast knowledge would help reduce backlog. Indeed, the recent appointment of three retired judges to act as associate justices of the Supreme Court assisted the court deal with the backlog.

*160 It is much easier to monitor a court system that has structured transparent practices than one that is either intentionally opaque or merely disorganized and chaotic. The statistics generated by good case tracking and information systems not only allow courts to better manage their operations, but they also enable outside watchdogs to observe trends and identify questionable aberrations.*



- b) The Judiciary should emulate Tanzania, Kenya and Rwanda by increasing the involvement of traditional justice systems and the recognition of customary laws, values and norms of Ugandans in the justice system.
- c) Among efforts to decongest the Courts of Judicature, government should spear head efforts to hold Local Council elections so as to equip and avail them as alternate fora in appropriate matters.
- d) Parliament should enact statutory laws that embrace the norms and values of the people and respond to their needs. Specifically, it should distinguish the values which are repugnant to the Constitution from those that are not such that the latter category is embraced not only in statutory law but also in the wider judicial system.
- e) Actors whose work enables the proper administration of justice should be encouraged and supported to play their role.
- f) Government should fast track the adoption of the Draft National Legal Aid Policy and the enactment of a Legal Aid Law.
- g) The Judiciary Training Institute should be strengthened and enabled to undertake continuous, proportional (trainings for all) and frequent education programs to empower all judicial officers to keep at par with legal developments, assisted to move away from conservative thinking, trained to approach issues more progressively and decisively, educated about social justice, taught the mission of the positions they hold and provided with ethics training.
- h) The Judicial Studies Institute's legal education should be reformed and curricula developed which are capable of producing competent professionals that are more sensitive to the concerns and values of their society.
- i) The Judicial Studies Institute should maintain proper records under which the participation and progress of each judicial officer is monitored to ensure that all judicial officers are effectively trained and empowered.
- j) Laws which create unnecessary procedural requirements and impediments should be identified and amended or repealed.
- k) Judicial officers should take the initiative to develop jurisprudence by studying, developing and laying down new principles of the law where there are voids.
- l) Information relating to the judiciary's performance should be accurately analysed and reported by the media since the judiciary is often criticized out of ignorance or misinformation and at other times, its effectiveness is hampered due to the same reasons.
- m) The criticism of the Judiciary should be legitimate, balanced and constructive. Relatedly, the Judiciary should be commended and applauded in deserving circumstances.
- n) Periodic efforts should be made by the Judiciary to liaise with and appraise both Parliament and the Uganda Law Reform Commission of developments or amendments in the law which have been recommended as necessary by the bench or rendered necessary by declarations of unconstitutionality.



- o) The Judiciary should embrace a routine evaluation of judicial officers under which results and grounds thereof are communicated to the respective judicial officers and those who are found wanting are advised to improve. Under this evaluation, all the judgments for each judicial officer for each calendar year must be scrutinized by the heads of each court and in the latter's case by retired judicial officers.
- p) The Judiciary and all stakeholders in the administration of justice should develop reward systems for the Judiciary not only to recognize and applaud the efforts of the distinctive performers but also to motivate and encourage their counter parts.
- q) Best practices that have been proposed or piloted should be rolled out across the country. Particularly, the small claims procedure and the Justice Centres should be enabled both financially and operationally to increase their reach and improve access across the country.
- r) The High Court Divisions especially the Execution Division should be set up as effectively in other areas as they operate in Kampala and the process of decentralizing the Court of Appeal should be speeded up. Also, the number and location of magisterial and jurisdictional areas should be reviewed so as to improve public access to justice.

## 4.6 HARNESSING PUBLIC CONFIDENCE IN THE JUDICIARY

Target Audience; **Judiciary, Media, Justice Law and Order Sector**

- a) The Judicial Officers should be proactive and hardworking so as to improve efficiency in the administration of justice and to promote public confidence
- b) The Judiciary should reduce the red tape and bureaucratic procedures that litigants are to meet to attain justice for example by issuance of directives, prompt court orders and avoiding unnecessary adjournments.
- c) Judicial officers should design a comprehensive case backlog reduction strategy to deal with the existing backlog. The use of the Judicial Score Card to monitor case disposal and the actual performance of the judicial officers should be implemented. Faster disposition of cases will boost public confidence in the Judiciary
- d) The Judiciary through its network, the Justice Law & Order Sector frequently and actively engage the members of the public through outreaches so as to repair the damaged relationship, to hear the grievances of the people, to educate and counsel the people, building trust in the institution of the Judiciary
- e) Mechanisms that increase access to information should be put in place for example the Information desk/officer at the Court
- f) The decisions/ judgments of the Judiciary must be in adherence to principles of law and the aspirations of the people so as to build confidence the Judiciary should in their decisions advocate for rights of the people.



- g) The Judiciary should enhance access to Justice particularly for the vulnerable persons like children, the old and the disabled.
- h) There should be effective resource utilization and periodical accounting initiatives in which the Judiciary itself makes a detailed account of the utilization of its budget.
- i) The Judiciary should spearhead the fight of corruption within the institution.

The Judiciary, cognizant of the value of public opinion has resolved to restore public trust in the institution by investigating and resolving all complaints of misconduct against its officers.<sup>161</sup>

## CONCLUSION

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Democracy is a system fraught with many ironies chief of which is that the fate of the strong lies in the hands of the weak. The Judiciary holds neither the power of the executive nor the purse of the Legislature and yet, for the sake of the general public, it remains the ultimate mediator and castigator of both. For this reason, it should have the hall marks of independence, the capacity and readiness to question and in some cases veto the Executive and/or Parliament.<sup>162</sup>

If the Judiciary is to achieve this in ways that preserve and do not undermine democratic legitimacy, it has to be efficient, capable and competent; needs to comprehend the underlying values of society and its ultimate servitude to the will of the people;<sup>163</sup> has to be responsive to public opinion and needs to be held accountable in ways that ensure that standards of performance, professionalism and integrity are upheld.

Although the Judiciary has strived to measure up to the expected standard, it has often fallen short on account of a myriad of challenges. However, some efforts to remedy these are in the pipeline and others are being proposed. It is hoped that the members of the Judiciary, other arms of the government and other stake holders in the administration of justice shall endeavor to support the judiciary in the realization of the ideal judicial system.

<sup>161</sup> The newly appointed Chief Justice Katureebe was quoted to have committed to cleaning house in the Judiciary, *The Judiciary insider*, supra, p. 11

<sup>162</sup> Cotton Deborah Helen and Odhiambo Odongo Godfrey, 'The Magnificent Seven: Africa's Response to US article 98 African Human Rights Law Journal (2007), P. 27.

<sup>163</sup> Article 126(1) of the Constitution of the Republic of Uganda 1995



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